HEARINGS REGARDING H.R. 15678, H.R. 15689, H.R. 15744, H.R. 15754, AND H.R. 16099, BILLS TO CURB TERRORIST ORGANIZATIONS

HEARINGS

BEFORE THE

COMMITTEE ON UN-AMERICAN ACTIVITIES

HOUSE OF REPRESENTATIVES

EIGHTY-NINTH CONGRESS

SECOND SESSION

JULY 20, 21, AND 22, 1966

(INCLUDING INDEX)

Printed for the use of the
Committee on Un-American Activities

U.S. GOVERNMENT PRINTING OFFICE

66-815 O WASHINGTON : 1966

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402 - Price 40 cents

COMMITTEE ON UN-AMERICAN ACTIVITIES

UNITED STATES HOUSE OF REPRESENTATIVES

EDWIN E. WILLIS, Louisiana, *Chairman*

WILLIAM M. TUCK, Virginia
JOE R. POOL, Texas
RICHARD H. ICHORD, Missouri
GEORGE F. SENNER, JR., Arizona
CHARLES L. WELTNER, Georgia

JOHN M. ASHBROOK, Ohio
DEL CLAWSON, California
JOHN H. BUCHANAN, JR., Alabama

FRANCIS J. MCNAMARA, *Director*
WILLIAM HITZ, *General Counsel*
ALFRED M. NITTLE, *Counsel*

CONTENTS

PUBLIC LAW 601, 79TH CONGRESS

The legislation under which the House Committee on Un-American Activities operates is Public Law 601, 79th Congress [1946]; 60 Stat. 812, which provides:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, * * *

PART 2—RULES OF THE HOUSE OF REPRESENTATIVES

RULE X

SEC. 121. STANDING COMMITTEES

* * * * * * *

17. Committee on Un-American Activities, to consist of nine Members.

RULE XI

POWERS AND DUTIES OF COMMITTEES

* * * * * * *

(q) (1) Committee on Un-American Activities.

(A) Un-American activities.

(2) The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

The Committee on Un-American Activities shall report to the House (or to the Clerk of the House if the House is not in session) the results of any such investigation, together with such recommendations as it deems advisable.

For the purpose of any such investigation, the Committee on Un-American Activities, or any subcommittee thereof, is authorized to sit and act at such times and places within the United States, whether or not the House is sitting, has recessed, or has adjourned, to hold such hearings, to require the attendance of such witnesses and the production of such books, papers, and documents, and to take such testimony, as it deems necessary. Subpenas may be issued under the signature of the chairman of the committee or any subcommittee, or by any member designated by any such chairman, and may be served by any person designated by any such chairman or member.

* * * * * * *

RULE XII

LEGISLATIVE OVERSIGHT BY STANDING COMMITTEES

SEC. 136. To assist the Congress in appraising the administration of the laws and in developing such amendments or related legislation as it may deem necessary, each standing committee of the Senate and the House of Representatives shall exercise continuous watchfulness of the execution by the administrative agencies concerned of any laws, the subject matter of which is within the jurisdiction of such committee; and, for that purpose, shall study all pertinent reports and data submitted to the Congress by the agencies in the executive branch of the Government.

RULES ADOPTED BY THE 89TH CONGRESS

House Resolution 8, January 4, 1965

* * * * * * *

RULE X

STANDING COMMITTEES

1. There shall be elected by the House, at the commencement of each Congress,

* * * * * * *

(r) Committee on Un-American Activities, to consist of nine Members.

* * * * * * *

RULE XI

POWERS AND DUTIES OF COMMITTEES

* * * * * * *

18. Committee on Un-American Activities.

(a) Un-American activities.

(b) The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (1) the extent, character, and objects of un-American propaganda activities in the United States, (2) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (3) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

The Committee on Un-American Activities shall report to the House (or to the Clerk of the House if the House is not in session) the results of any such investigation, together with such recommendations as it deems advisable.

For the purpose of any such investigation, the Committee on Un-American Activities, or any subcommittee thereof, is authorized to sit and act at such times and places within the United States, whether or not the House is sitting, has recessed, or has adjourned, to hold such hearings, to require the attendance of such witnesses and the production of such books, papers, and documents, and to take such testimony, as it deems necessary. Subpenas may be issued under the signature of the chairman of the committee or any subcommittee, or by any member designated by any such chairman, and may be served by any person designated by any such chairman or member.

* * * * * * *

27. To assist the House in appraising the administration of the laws and in developing such amendments or related legislation as it may deem necessary, each standing committee of the House shall exercise continuous watchfulness of the execution by the administrative agencies concerned of any laws, the subject matter of which is within the jurisdiction of such committee; and, for that purpose, shall study all pertinent reports and data submitted to the House by the agencies in the executive branch of the Government.

HEARINGS REGARDING H.R. 15678, H.R. 15689, H.R. 15744, H.R. 15754, AND H.R. 16099, BILLS TO CURB TERRORIST ORGANIZATIONS

WEDNESDAY, JULY 20, 1966

UNITED STATES HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE OF THE
COMMITTEE ON UN-AMERICAN ACTIVITIES,
Washington, D.C.

PUBLIC HEARINGS

The subcommittee of the Committee on Un-American Activities, appointed July 19, 1965, to conduct hearings on activities of the Ku Klux Klan organizations in the United States, met, pursuant to notice, at 10 a.m., in Room 429, Cannon House Office Building, Washington, D.C., Hon. Edwin E. Willis (chairman) presiding.

(Subcommittee members: Representatives Edwin E. Willis, of Louisiana; Joe R. Pool, of Texas; Charles L. Weltner, of Georgia; John M. Ashbrook, of Ohio; and John H. Buchanan, Jr., of Alabama.)

Subcommittee members present: Representatives Willis, Weltner, Ashbrook, and Buchanan.

Staff members present: Francis J. McNamara, director; William Hitz, general counsel; Alfred M. Nittle, counsel; Donald T. Appell, chief investigator; and Philip R. Manuel, investigator.

The CHAIRMAN. The committee will come to order.

Before hearing the testimony of the first witness, I would like to make a general statement about these hearings, their nature and purpose.

When the Committee on Un-American Activities announced on March 30, 1965, that an investigation of Ku Klux Klan organizations had been unanimously approved, the expected reactions came from certain quarters.

"So what?" some said. "Nothing will come of it."

"It'll be nothing but a whitewash of the Klans," others said.

Still others claimed that the committee had decided to investigate the Klans only to have an excuse, or to provide specious justification, for later efforts to harass "liberals" or to try to discredit the civil rights movement.

Today, the committee's record speaks for itself. We made an intensive investigation of the Klans for a period of 6½ months. Between October 19, 1965, and February 24, 1966, we held 36 days of hearings and received the testimony of 187 witnesses. The transcript of the hearings runs to over 4,000 pages.

Never before in the history of the United States has so much information about the Klans been placed in a public record.

The committee stuck to the purpose of the hearings expressed in my opening statement of October 19, 1965—the development of facts about Klan organization, structure, strength, and activities. The hearings were objective. They were certainly not a whitewash of the Klans. And the Klan witnesses' consistent failure to deny the facts about their activities, with which they were confronted, proved, I believe, that the committee did not go to the other extreme of unfairly trying to paint the Klans any worse than they are.

The resolution adopted by the committee on March 30 of last year stated that its investigation of the Klans was to be made "for the purpose of aiding Congress in any necessary remedial legislation." We meant that statement.

On June 14 of this year, after our investigative hearings were completed, I introduced a bill which, as I said on the House floor, was designed to punish, curb, and eliminate the reprehensible, terroristic activities of the Klan movement. Identical bills have been introduced by three other members of the committee and also by Mr. Minish. I believe that these bills provide the medicine we need to cure the disease with which Klanism would infect our society. And that disease can be described in a few words: harassment, hate, intimidation, violence, including whippings, assaults and, yes, even murder.

These hearings are being held today to obtain the views of various witnesses concerning these bills, to listen to their criticisms of them, or to any recommendations they might have for strengthening or improving them.

I would like to emphasize that the bills before the committee are not civil rights bills; they were not intended to be such. This committee has no jurisdiction in the field of civil rights as such. The determination to investigate the Klans was based on its authorizing resolution which empowers the committee to investigate subversive and un-American activities, and all activities, whether of domestic or foreign origin, which attack the principle of the form of government as guaranteed by our Constitution.

The House, by an overwhelming vote on April 14, 1965, approved the committee's determination to make its investigation on that basis.

One of the purposes, and an important purpose, of these bills is to provide legislative medicine against the infection of klanism. But that is not their only purpose.

The evil effects of Klan activities, as brought out in our hearings—and also as generally known—have convinced me, and other members of the subcommittee as well, that this country cannot tolerate terrorist activity by any organization, whether or not it is of the Klan type. For this reason, the bills we are now considering have been drawn in such manner that they would not be limited in their application to Klan organizations. They would strike at any clandestine group engaging in terrorist activities.

At the same time, we have made careful effort to draft these bills so that, taken in their full context, they make it clear that they are not intended to embrace bona fide secret organizations. I will have more to say about this during the course of these hearings and, in that connection, we will really be formulating legislative history.

I might as well say now that I have been a lawyer for 40 years. Most of the members of this committee are lawyers. We have the most able counsel on our staff that we could assemble. We gave very,

very, very careful thought to the framing of this bill in order to make definitions such as that of a clandestine organization just right, not too loose so as to embrace bona fide fraternal or other organizations, and not so stringent as to fall within the pitfalls of possible violation of the bill of attainder provisions of the Constitution. I think we avoided those pitfalls and I think we came out with language that fits exactly what we have in mind and outlines what ought to be done with reference to terroristic activities of the type engaged in by Klan organizations.

The bills before us are based on the conviction that the U.S. Constitution does not condone or protect organized harassment of, or the terrorizing, flogging, beating, mutilation, injuring, or killing of, American citizens by *any* group on *any* pretext.

They are not minority or special interest bills in any sense of the word. They are not designed to give special protection to certain persons because they are members of a particular race, color, or creed. There are no such limitations on their application.

They are designed to protect the lives and persons of all American citizens against the organized efforts of any clandestine group which uses force, violence, or any unlawful means to impose its political, economic, social, or other policies, practices, or beliefs on others, or attempts to punish others because they do not conform to, or because they act contrary to, the policies, practices, or beliefs of the organization.

I would like, before calling our distinguished first witness, also to read into the record at this time the following letter from my good chairman, Emanuel Celler, chairman of the Judiciary Committee. It is dated July 19, 1966.

Dear Mr. Chairman:

I am addressing this letter to you trusting that you will see fit to introduce this into the record of the hearings on H.R. 15678, to amend the Internal Security Act of 1950, and for other purposes.

I followed most carefully this Committee's investigation of the Ku Klux Klan. I did so because many had expressed to me the misgivings about the purposes of the Committee on Un-American Activities and had questioned its objectivity. Indeed, many had asked me as Chairman of the Committee on the Judiciary to undertake these investigations because of their misgivings of the Committee on Un-American Activities.

Having spoken to you prior to the commencement of these hearings, I had no hesitancy in advising those with whom I spoke of my conviction that the hearings would be thorough, productive, and objective. I am more than pleased to be able to say that my conviction was completely justified. When the record is printed, this country will be supplied with authoritative information on the who and what and how of the Ku Klux Klan, and with this record no individual can absolve himself by saying he did not know of the Klan's terroristic activities and the degree of hatred and violence for which it stands.

The sincerity of this Committee and its wish to reach at this evil are now firmly established.

Sincerely yours,

/s/ Emanuel Celler,
EMANUEL CELLER,
Chairman.

I am delighted to comply with the wish of my good chairman in putting his letter in the record.

(A copy of Mr. Willis' bill, H.R. 15678, follows:)

89TH CONGRESS
2D SESSION

H. R. 15678

IN THE HOUSE OF REPRESENTATIVES

JUNE 14, 1966

Mr. WILLIS introduced the following bill; which was referred to the Committee on Un-American Activities

[H.R. 15689, introduced by Mr. Weltner on June 14, 1966; H.R. 15744, introduced by Mr. Minish on June 16, 1966; H.R. 15754, introduced by Mr. Ashbrook on June 16, 1966; and H.R. 16099, introduced by Mr. Senner on June 30, 1966, are identical to H.R. 15678.]

A BILL

To amend the Internal Security Act of 1950, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Internal Security Act of 1950 is amended by adding at the end thereof the following new title:

"TITLE IV—ORGANIZATIONAL CONSPIRACIES

"SEC. 401. This title may be cited as the 'Organizational Conspiracies Act of 1966'.

"FINDINGS OF FACT

"SEC. 402. The Congress of the United States hereby finds and declares that—

"(1) There exist within the United States certain clan-

destine organizations which in varying degree and manner engage in activities which adversely affect the general welfare of the United States and tend to subvert constitutional processes.

"(2) Such organizations endeavor to effect certain social, economic, or political objectives without regard to the propriety of the means, and frequently engage in activities destructive of the peace and security of the United States.

"(3) These organizations, though often unrelated to one another, and having different objectives or purposes, share, nonetheless, the common traits of secrecy and a pattern and practice of intimidating, threatening, or otherwise coercing citizens of the United States to compel such citizens to do or not to do those acts which will conform with the purposes and objectives of such organizations.

"(4) Due to the nature and scope of such organizations, and the existence of affiliated elements, working toward common objectives in various States of the Nation, the activities of such organizations affect interstate and foreign commerce.

"(5) Although Federal agencies have undertaken a sustained and vigorous enforcement of laws hitherto enacted, activities of the kind above set forth continue to expand and pose an increasing threat to the security of the Nation and the peace and tranquillity of its citizens. In order to

advance the general welfare, to preserve constitutional processes, and to secure to all citizens the protection of life, liberty, and property to which they are entitled under the Constitution and laws of the United States, it is therefore provided:

"DEFINITIONS

"SEC. 403. For the purposes of this title—

"(1) 'Attorney General' means the Attorney General of the United States.

"(2) The term 'person' means an individual or an organization.

"(3) The term 'organization' means any group, society, association, or any chapter, branch, unit, or affiliate thereof, and any partnership, trust, foundation, fund, or combination of individuals associated together for joint action on any subject or subjects, whether incorporated or not; and includes two or more members thereof combined or confederated for any purpose, or acting in concert to perform any act.

"(4) The term 'clandestine organization' means any organization (A) which conceals, or attempts to conceal, its name, activities, or membership, or the name, activities, or membership of any chapter, branch, unit or affiliate thereof by the use of cover names, codes, or any deceptive practice or other means, or (B) whose members shall be

required, urged, or instructed, or shall adopt any practice, to conceal their membership or affiliation and that of others in or with such organization, or (C) whose members shall take any oath or pledge, or shall administer any such oath or pledge to those associated with them, to maintain in secrecy any matter or knowledge committed to them by the organization or by any member thereof, and (D) which shall transact business or advance any purpose at any secret meeting or meetings which are guarded or secured against intrusion by persons not associated with it.

"(5) The term 'criminal conspiracy' means any organization in the United States—

"(A) which advocates, teaches, or employs, or

"(B) which within three years prior to the filing of any action or other proceeding by the Attorney General against such organization pursuant to section 412 hereof, has engaged in, or

"(C) whose leaders, officers, or members, within the aforesaid three years, in furtherance of any purpose, objective, or plan of such organization, have participated in, aided, or encouraged, or

"(D) any part of the resources of which have been applied, within the aforesaid three years, in aid or toward the commission of,

acts of violence, intimidation, or harassment, for the purpose

or having the effect of coercing any citizen or class of citizens of the United States to do or not to do any act or thing, or to engage in or refrain from engaging in any course of conduct, to conform with any purpose, objective, or plan of such organization.

"PROHIBITED ACTS

"SEC. 404. Unlawful travel or use of facilities in commerce.

"(a) Any person who, being a member or agent of a clandestine organization and acting in furtherance of or in relation to any purpose, objective, or plan of such organization, moves or travels in interstate or foreign commerce or uses any facility in interstate or foreign commerce, including the mail, with intent to—

"(1) commit any crime of violence to the person or property of another, or

"(2) promote, manage, or facilitate the commission of any act specified in subparagraph (1),

and thereafter performs or attempts to perform any act specified in subparagraph (1), or

"(b) Any person who conspires with or solicits any such person described in subsection (a) to move or travel in interstate or foreign commerce or to use any facility in interstate or foreign commerce, including the mail, for any

of the purposes specified in subparagraphs (1) and (2) above, upon any such act as specified in said subparagraph (1) being performed, or attempted, by such person described in subsection (a).

"Shall be fined not more than $10,000 or imprisoned not more than twenty years, or both; and if death results from the commission of any such act, shall be subject to imprisonment for any term of years or for life.

"SEC. 405. (a) Any person who, being a member or agent of a clandestine organization and acting in furtherance of or in relation to any purpose, objective, or plan of such organization, kills any person moving in interstate commerce, shall be punished as provided by sections 1111 and 1112 of title 18, United States Code.

"(b) Any person who, being a member or agent of such organization and acting as aforesaid, kidnaps any person moving in interstate commerce, shall be punished (1) by imprisonment for any term of years or for life, or (2) by death or imprisonment for any term of years or for life, if death results to such individual.

"(c) Any person who, being a member or agent of such organization and acting as aforesaid, attempts to kill or kidnap any person moving in interstate commerce, shall be punished by imprisonment for any term of years or for life.

"(d) Any person who, being a member or agent of such organization and acting as aforesaid, assaults any person moving in interstate commerce, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

"SEC. 406. Any person who, being a member or agent of a clandestine organization and acting in furtherance of or in relation to any purpose, objective, or plan of such organization, willfully by force, intimidation, or threat, unlawfully obstructs or impedes the free movement of any citizen in interstate commerce, shall be fined not more than $1,000 or imprisoned not more than two years, or both.

"SEC. 407. Teaching or advocacy of force to deprive citizens of rights.

"(a) Any person who willfully teaches, advises, or advocates the duty, necessity, desirability, or propriety, by the use of violence, force, intimidation, or any unlawful means, of (1) furthering or accomplishing any purpose, objective, or plan of any clandestine organization doing business or operating in interstate or foreign commerce, or (2) preventing or hindering any citizen of the United States from freely exercising or enjoying any right, liberty, privilege, or immunity granted or secured to him by the Constitution and laws of the United States, or

"(b) Any person who teaches or demonstrates to another the use, application, or making of explosives, any ex-

plosive device, or any other device or technique capable of causing injury to person or property, intending that such explosives, explosive device, or any such device or technique be employed by another to (1) further or accomplish any purpose, objective, or plan of any clandestine organization doing business or operating in interstate or foreign commerce, or (2) injure, oppress, threaten, punish, or intimidate any citizen in the free exercise or enjoyment of any right, liberty, privilege, or immunity granted or secured to him by the Constitution and laws of the United States—

"Shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

"SEC. 408. Use of radio, wireless, or telephone to commit or conceal offense.

"Any person who, being a member or agent of any clandestine organization and acting in furtherance of or in relation to any purpose, objective, or plan of such organization, by means of any radio or wireless device or telephone transmits, or causes to be transmitted, any message or signal, with the intent to aid or assist any other person or himself in the commission or concealment of any offense against the United States, or to prevent detection or arrest for such offense, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

"SEC. 409. Oath or pledge to conceal offense.

"Any person who, in relation to the business or activities of a clandestine organization, administers to another, or takes, an oath or pledge to conceal from lawful authority of the United States any knowledge either may have, or which either may thereafter acquire, of the commission of any offense, or of any offense that may in the future be committed, by another member of said organization against the United States, shall be fined not more than $500 or imprisoned not more than two years, or both.

"MISAPPROPRIATION OF ORGANIZATIONAL ASSETS

"SEC. 410. Any person who, being an agent, officer, director, or employee of a clandestine organization doing business in interstate or foreign commerce, embezzles, steals, or willfully misapplies any of the moneys, funds, credits, property or assets, owned, possessed or in the custody of such organization, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

"FORFEITURE OF VEHICLE

"SEC. 411. Any motor vehicle which is operated upon any highway in interstate or foreign commerce, by the owner thereof, or by any other person with the knowledge and consent of the owner, for the transportation of himself or any other person, or the transportation of any firearm,

explosive, or device capable of causing injury to person or property, with the intent that such person, firearm, explosive, or device shall be employed or used to commit any crime of violence against the person or property of another, shall be forfeited to the United States.

"INJUNCTIVE RELIEF

"SEC. 412. (a) The Attorney General may institute for the United States, or in the name of the United States, a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order, against any criminal conspiracy, or against any of its officers, leaders, members, agents, confederates, and associates, whenever he has reasonable grounds to believe that such criminal conspiracy, or any of its officers, leaders, agents, members, confederates, or associates acting in furtherance of or in relation to any purpose, objective, or plan of such organization, is engaging in or is about to engage in (1) any act or practice which is an offense against, or declared unlawful by, the laws of the United States, including but not limited to any act prohibited by the provisions of this title, or (2) the commission of any act of violence, intimidation or harassment, that injures, oppresses, or punishes any citizen or class of citizens in the free exercise or enjoyment of any right, liberty, privilege, or immunity granted, secured,

or protected by the Constitution or laws of the United States. In any proceeding hereunder the United States shall be liable for costs the same as a private person.

"(b) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this title and shall exercise the same without regard to whether the petitioner shall have exhausted any administrative or other remedies that may be provided by law.

"(c) In determining whether an organization is a criminal conspiracy within the meaning of this title, the court shall, among other relevant factors, consider—

"(1) the extent to which the history, traditions, purposes, policies, and activities of the organization reflect patterns of threats, intimidation, harassment, and violence in accomplishing its objectives and purposes;

"(2) the extent to which the organization, for the purpose of concealing its goals and activities (A) conceals or refuses to disclose its membership or associates, or any part thereof, or (B) requires or instructs its members or associates to conceal their association or activities or those of others with such organization, or to take oaths or pledges of secrecy, or (C) in any other way operates in a secret manner;

"(3) the extent to which the members and resources of the organization have been employed or

engaged in the commission of, or in aiding, abetting, encouraging, inciting, or participating in, acts of violence or intimidation or in unlawful or criminal activity;

"(4) the extent to which persons who are active in the management, direction, or supervision of the organization, whether or not holding office therein, have been involved in the commission of acts of violence, intimidation, or in unlawful or criminal activity;

"(5) the extent to which the members of the organization are subject to the discipline and control of the organization or its leadership.

"IMMUNITY

"SEC. 413. In any action for injunctive relief pursuant to the provisions of this title, or in any case of contempt relating thereto, or in any prosecution instituted for the commission of any offense prohibited in this title, or in any proceeding for the forfeiture of any motor vehicle as provided herein, whenever in the judgment of the Attorney General, or of the United States Attorney, upon the approval of the Attorney General, the testimony of any witness, or the production of books, papers, or other evidence by any witness in any such proceeding is necessary to the public interest, he shall make application to the court that the witness shall be instructed to testify or produce evidence, and upon order of the court such witness shall not be excused from testifying or from produc-

ing books, papers, or other evidence on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. But no such witness shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, nor shall such testimony so compelled, nor any fact or information which may be discovered as a result of such testimony or evidence, be used as evidence in any criminal proceeding against him in any court except for prosecution for perjury or contempt committed while giving testimony or producing evidence under compulsion as herein provided.

"CRIMINAL CONTEMPT

"SEC. 414. (a) In all cases of criminal contempt arising under the provisions of this title, the accused upon conviction shall be punished by fine or imprisonment, or both: *Provided, however*, That in case the accused is a natural person the fine shall not exceed the sum of $5,000 nor shall imprisonment exceed the term of five years. The accused shall, upon demand, in any case of criminal contempt arising under the provisions of this title be entitled to a trial by jury: *Provided, however*, That the accused may, at the discretion of the court, be tried before a judge without

a jury, in those cases of criminal contempt committed in the presence of the court or so near thereto as to obstruct the administration of justice, or with respect to those cases of criminal contempt to punish the misbehavior, misconduct, or disobedience of any officer in respect to the writs, orders, or process of the courts, in which the penalty shall not exceed the limits fixed for petty offenses.

"Nothing herein or in any other provision of law shall be construed to deprive courts of their power, by civil contempt proceedings, without a jury, to secure compliance with or to prevent obstruction of, as distinguished from punishment for violations of, any lawful writ, process, order, rule, decree, or command of the court in accordance with the prevailing usages of law and equity, including the power of detention.

"(b) An acquittal or conviction in a prosecution for a specific crime under the laws of the United States shall bar a proceeding for criminal contempt, which is based upon the same act or omission and which arises under the provisions of this title; and an acquittal or conviction in a proceeding for criminal contempt, which arises under the provisions of this title, shall bar a prosecution for a specific crime under the laws of the United States based upon the same act or omission.

"NONPREEMPTION

"SEC. 415. Nothing contained in this title shall be construed as indicating an intent on the part of Congress to occupy the field in which this title operates to the exclusion of a law of any State, Territory, Commonwealth, or possession of the United States, and no law of any State, Territory, Commonwealth, or possession of the United States which would be valid in the absence of the section shall be declared invalid, and no local authorities shall be deprived of any jurisdiction over any offense over which they would have jurisdiction in the absence of this section.

"SEPARABILITY OF PROVISIONS

"SEC. 416. If any provision of this title or the application thereof to any person or circumstances is held invalid, the remainder of the title and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby."

The CHAIRMAN. Now we are very pleased and honored to have with us the distinguished Attorney General of the United States, Mr. Nicholas Katzenbach.

Mr. Katzenbach, we are very, very happy to have you, and honored to have you this morning, and look forward to your views.

STATEMENT OF ATTORNEY GENERAL NICHOLAS deB. KATZENBACH, ACCOMPANIED BY KEVIN MARONEY, ATTORNEY, INTERNAL SECURITY DIVISION, DEPARTMENT OF JUSTICE

The ATTORNEY GENERAL. Thank you, Mr. Chairman.

I have a very brief statement here I would like with your permission to read. I am accompanied here this morning by Mr. Kevin Maroney, an attorney in the Department of Justice.

Mr. Chairman, I welcome your invitation to appear before this committee. It affords a double opportunity; to salute the chairman and the members of this committee for the careful and illuminating investigation they have made of the Ku Klux Klan and also to comment on the legislative proposals you are making in H.R. 15678.

Terrorism and intimidation are an intolerable affront to the spirit and meaning of our democratic system. Though the Ku Klux Klan no longer has as pervasive and malignant an influence as it once did, we have found that it still possesses considerable and in some areas growing strength. Its activities remain a serious blight and threat.

This committee has clearly revealed a number of vital facts.

—That the strength of Klan membership is well above the common estimates;

—That Klans have frequently employed deceptive "cover" arrangements to conceal existence of their Klaverns and bank accounts;

—That many Klan officers and members have criminal records; the involvement of the Klan in several brutal killings such as that of Mrs. Liuzzo is clear;

—That within the Klan there are a number of secret organizations formed for the express purpose of carrying out acts of terrorism and violence;

—That generally members of the Klan have easy access to a variety of weapons and to training in their use, that Klan members purchase weapons from other Klan members licensed as gun dealers and that citizen band radios are often used by the Klan for communication purposes.

Mr. Chairman, you and your colleagues have brought to public scrutiny a compelling and disturbing account of organized terrorist activity.

The facts you have developed in your hearings have had the closest attention of my Department. In drafting Title V of the proposed Civil Rights Act of 1966, which seeks to deal with terror and violence, we have been conscious of your work and your findings. The Department of Justice has drawn much benefit from the searching hearings and has been pleased to cooperate. From the committee's efforts, the public now has a much fuller awareness of the structure and activities of the Klan.

As presiding officer, you have, Mr. Chairman, set an example both by your courage and the judiciousness of your approach. May I observe that you and the committee have shown a full concern for due

process and rules of fairness in the hearings. The Department of Justice had your complete cooperation in not prejudicing the rights of any individuals in pending criminal prosecutions.

It is appropriate that this committee should now seek legislative remedies for the evils which it has identified. The President and the Department of Justice also are determined to find proper correctives. H.R. 15678 and Title V of the proposed Civil Rights Act of 1966 both aim at the same target. Both approaches deserve consideration.

While it is impossible for any of us to claim certainty as to the right course to counter and deter violence by Klan members, I believe that Title V of H.R. 14765 possibly represents the wiser response to this problem. Then, too, there are constitutional difficulties and problems with some aspects of the committee's bill.

And finally, in my judgment, the organizational and conspiracy concepts upon which the bill is based might unnecessarily complicate prosecution of the perpetrators of such violence.

There are very real problems. I am not certain that all of them can be solved in a bill which is both constitutional and effective. I am sure, however, that the committee will continue to attempt to meet these problems, and it will have the cooperation of the Department of Justice in that effort.

The CHAIRMAN. Mr. Attorney General, I am very grateful for your views. May I say that you are so right in saying that the Klan organization has been operating under a really false, phony front, for all their protestations of Americanism and total rejection of the methods of the Communists in operating under the cloak of front organizations.

In many respects, and I say this without making odious comparisons or equating the two, the fact still remains that the operations of the Klans and the Communist conspiracy at some points are parallel. In that connection, I commend anybody who cares to do so to read my foreword to the Annual Report of this committee to the Congress, which I signed just a matter of days ago, in which I draw a parallel between the methods of operation of what I call hate groups across the board, whether they be Nazi, Communist, Klans, rightists, or leftists.

Invariably, at some point, because of their similarity in certain respects, their tactics parallel. One of them is secrecy, and one of them is operation in darkness, away from the sunlight of public appearance. I have often said, and I now say, that if these groups, whoever they are, to the right or to the left, were engaged in the sale of merchandise instead of ideas and ideology, they could, let us say, hire the Astrodome of Houston, Texas, and put a great big sign advertising their common product, "Hate For Sale."

(At this point Representative Pool entered the hearing room.)

The CHAIRMAN. Let me say this: As cheap and as truly common as hate is, the price is high in terms of the havoc it wreaks. The price is discord, distrust, imputations of disloyalty of Government officials, operation beyond the bounds of our Constitution, and all the rest. The price of hate—as cheap as it is, I say—comes very high. And yet, though I draw no parallel, I must repeat that, in many respects, the methods of operation, particularly as regards secrecy and false fronts, of all these hate groups is just simply to adopt the same line of action.

The ATTORNEY GENERAL. Mr. Chairman, I agree with that and I think that you and the committee have performed a most valuable function in making this clear to the American public. I know that that has been effective from the reports that I have had from the Federal Bureau of Investigation as to the reactions to the 36 days of hearings that this committee has had.

The CHAIRMAN. Mr. Attorney General, some question has been raised that some bona fide fraternal or other groups might be classified as clandestine organizations and prosecuted under the present definition.

Let me point out two considerations related to this problem and then ask you a question. First, section 402, an integral part of the bill, contains congressional findings of fact which justify the proposed legislation and also spell out the nature of the groups intended to be reached by the bill.

Second, there is a difference between "secret" and "clandestine." Generally, "secret" only means concealed or not revealed. "Clandestine," however, means something that is concealed or not revealed for an illicit or illegal purpose.

We have many bona fide secret organizations in this country, and they openly proclaim they are secret. Millions of Americans belong to such groups. I belong to one of them; I am a member of the Knights of Columbus. There are probably a lot of others in the room who are members of other such groups. These groups do not consider themselves, and are not considered to be, clandestine. They are never referred to as such. They do not have illicit or evil purposes.

Now, considering these two facts, the ordinary meaning of "clandestine" as opposed to "secret," and the description of clandestine groups in section 402 of this bill, let me ask you this question: Do you take it, Mr. Attorney General, that we agree that any bona fide fraternal or civil rights organizations or groups in this country are not intended to, and actually do not, come under the definition in this bill?

Let me say before you answer, that we gave this subject, as I said a while ago, most careful consideration and we have made every effort possible not to make it too loose, and certainly not to make it too tight and so exclusive that we would run against the evil such as, for instance, of drafting a bill so that only 1 contractor out of 10,000 could supply the material. That is commonly recognized in our society as wrong. And I think that we have to avoid the evil, under the bill of attainder section of our Constitution, and not wrap up a bill so tightly that it could refer to one and no other possible organization. We tried to reach a middle ground and I think we succeeded, as our opinion—and I am now saying this for legislative purposes—because legislative purpose, when it is stated deliberately by members of a committee, is competent in interpreting a bill.

What I am saying will be repeated in the report and in the House, so that I repeat that we were very careful to do our very level best not to encompass, or to fence in or to admit under the coverage of the bill, any fraternal or other bona fide organizations and at the same time, however, not to make it exclusively a Klan bill. I will repeat that. Any organization whose objective and whose method of operation and whose common practice is terrorism would be included in the bill.

Do you not agree with me, Mr. Attorney General, in my general views?

The ATTORNEY GENERAL. Yes, I do, Mr. Chairman. I think you have been careful in that respect. Furthermore, if the definition is broad, the prohibited acts are more narrowly defined so they have to actually be doing something unlawful.

The CHAIRMAN. Let me ask you one more question: Suppose for the sake of discussion that an Attorney General should try to proceed against a fraternal or bona fide secret organization under the act. Do you not think that the organization could successfully object on the ground that section 402 of the act, the definition of clandestine organization, the use of the word "clandestine" rather than "secret" in the act, the investigation out of which the bill evolved, and these hearings today, plus my statement of what we intend the bill to mean, make it abundantly clear that the statute was never intended to reach such an organization?

The ATTORNEY GENERAL. I should certainly think so, Mr. Chairman.

The CHAIRMAN. Well, I appreciate that and I am glad to have your considered judgment because that is our deliberate purpose, and it will be so stated time and again in the report, during these hearings, and on the floor of the House.

Mr. WELTNER. Mr. Chairman, would it be appropriate at this point to inquire of the Attorney General his view of this bill, whether it is not correct that mere membership in an organization defined as a clandestine organization carries with it no sanction whatsoever, that it is only when acts otherwise criminal in nature are performed or perpetrated by the members of a clandestine organization that any criminality attaches?

The CHAIRMAN. That is right.

In that connection we considered and wrestled with the problem of a so-called disclosure provision or the approach, let's say, of the Internal Security Act which has frustrated so many people in its enforcement. We rejected it. So you are right. The answer to your question is obvious in my opinion. In other words, membership is not made a crime, it has to do only with criminal acts of members of an organization whose dedication and purpose is bent toward terroristic activities.

Do you not agree, Mr. Attorney General?

The ATTORNEY GENERAL. Yes; there is no sanction for membership here and it only involves the points that you make.

Mr. POOL. Mr. Chairman, I would like to ask the Attorney General: In this section (a) of 407, that is on pages 7 and 8, it spells out several things there, but the thing that I think that we ought to add to this thing—I want to ask your opinion on it—should be that the purpose should be unlawful in talking about the teaching or advocacy of force to further any objective of any clandestine organization operating in interstate commerce. Should we not spell out the purpose that it would have to be unlawful?

The CHAIRMAN. What does "binding and lawful" mean?

Mr. POOL. Well, the trouble is you are going to get into some industrial field there, and I do not think the Attorney General would ever use the bill for that purpose, but we might as well write it to amount to something where it would be technically right:

"furthering or accomplishing any purpose, objective, or plan of any clandestine organization doing business or operating in interstate or foreign commerce, or (2) preventing or hindering any citizen of the United States from freely exercising or enjoying any right, liberty, privilege, * * *"

I think we ought to mention the purpose of being unlawful.

The CHAIRMAN. Of course it refers you to a clandestine organization.

Mr. POOL. Yes, but you are getting all the Masons and Knights of Columbus.

The CHAIRMAN. No; you are not. Are you expressing the opinion that——

Mr. POOL. I am expressing the opinion that the bill ought to have "unlawful purpose" stuck in here. That is what I am asking the Attorney General, if it should not be added to the bill.

Mr. Chairman, on page 8, under (1) there, "further or accomplish any"—add "unlawful"—"purpose, objective, or plan of any clandestine organization doing business or operating in interstate or foreign commerce".

The CHAIRMAN. I don't think we have objection to that. Let's let the staff wrestle with that. How about that, Mr. Weltner?

Mr. WELTNER. I think it is a good suggestion.

Mr. POOL. The reason I ask it now, we have the top attorney in the United States, and I want to ask his opinion on it. That is why I asked it.

The CHAIRMAN. I don't think we have objection to it.

Mr. POOL. What do you think about it, Mr. Attorney General? Do you think it is necessary?

The ATTORNEY GENERAL. I think in clause (1) where you are adding it that was the intent of the bill anyhow. I would think it would make that intent more clear, if it were added.

Mr. POOL. I think it would make it better.

The CHAIRMAN. I am quite sure we would agree with you. We appreciate your view. Keep that amendment in mind, Mr. Weltner.

Mr. ASHBROOK. Mr. Attorney General, in your statement you refer to the fact that there are constitutional difficulties and problems in some aspects of the committee's bill. I think it would be most helpful at this time if you would spell out some of these constitutional difficulties and problems so we can wrestle with them.

The ATTORNEY GENERAL. I was particularly concerned in that respect, really, with section 407 because of the various cases under the Smith Act which has somewhat comparable provisions. I think you run into some first amendment problems with respect to 407(a) unless that is very closely confined to a situation which predictably is going to have the result so it really comes very close to being advocacy of an illegal act likely to be effective in resulting in the actual commission of those acts. I think that that was one of the problems, perhaps the principal constitutional problem, that I was concerned with.

I think it is conceivable, constitutional problems with respect to the possible breadth of the definition of clandestine organization. I think the chairman has made it clear that he did not want various legitimate organizations covered there—despite the fact that a legitimate organization, I think, would have a good defense to the act—I can conceive

that other individual defendants would raise the questions of the breadth of that as being too vague and too broad and therefore unconstitutional in that respect.

The CHAIRMAN. Mr. Attorney General, I want to ask if you might perhaps supply language that we might consider and adopt that would be—I don't think we are apart at all on your objective and the view that you are expressing.

The ATTORNEY GENERAL. That is right.

The CHAIRMAN. It is a question of expressing it. I wonder perhaps if you could give us a very short, succinct memo on that, perhaps the use of simple language which might be acceptable to accomplish what you have in mind.

The ATTORNEY GENERAL. I would be happy to try to work with you and members of the staff, Mr. Chairman.

Mr. ASHBROOK. Mr. Attorney General, in relation to the Smith Act cases, as in relation to 407, aren't we even on more solid ground here because, in the Smith Act, you do have a certain nebulous area of the advocacy of the overthrow of the country, where in this case we are talking about the teaching or advocacy of specific acts of violence, teaching or training people to use fire bombs, to school them in weaponry, dynamiting, and so forth. Aren't we much closer to specific acts in avoiding some of the generalisms that seem to raise questions among Supreme Court decisions? It would seem that the point you make—you are a much more able attorney than any of us, obviously—but it seems much more close to specific acts than we are dealing with in the general advocacy of the overthrow of the country.

The ATTORNEY GENERAL. I agree with that. I have in that respect relatively little trouble with (b), although we may have trouble trying to prove it in a specific context. We have no trouble there. I have a little bit in (a) unless as part of your proof you could show that advocacy of using illegal means here actually was calculated to result in their use, that it was a sufficiently close connection between the advocacy of it and the actual probability of its being used. Then I don't think you would have a constitutional difficulty. I think that has been the intent in drafting it, to create that relationship.

Mr. ASHBROOK. I think what Mr. Willis said is correct. I have also introduced this bill, and we don't take specific pride in authorship, it is a starting vehicle and we are looking for a way to make it a better bill.

One last question: You express some preference for Title V, and I assume that the same thing would apply to you that I just said, it is not pride of authorship. At least it is not in our case with H.R. 15678 and others. If that is true, and I am sure it is, what particular areas of Title V do you think are superior to ours, and what problems or what jungle are we getting into in problems that Title V is avoiding that might give us a little comparison, a little background?

The ATTORNEY GENERAL. Yes, I would be happy to, Congressman. I am not suggesting that the overlap between the two is complete, because it is not. In Title V there are certain specific prohibitions of actual acts to be committed; that is, somebody doing something to deprive somebody of a particular guaranteed Federal right, and those are fairly broadly drafted.

Now the reason I express some preference for that is the fact that, in drafting it that way, we can deal directly with the unlawful act or

the conspiracy to commit the unlawful act and all we have to show is that the act was committed pursuant to this conspiracy and by the people who actually committed the act.

Now I could illustrate this perhaps most simply——

The CHAIRMAN. I have a question on that.

The ATTORNEY GENERAL. If I could just illustrate my point on that.

If you look at section 406, for example, you have got, "Any person who, being a member or agent of a clandestine organization and acting in furtherance of or in relation to any purpose, objective, or plan of such organization, willfully by force, intimidation, or threat, unlawfully obstructs or impedes the free movement of any citizen in interstate commerce * * *."

Now you could constitutionally draft a statute that simply said, "any person who willfully by force, intimidation, or threat unlawfully obstructs or impedes the free movement of a citizen in interstate commerce," and you would have a perfectly valid constitutional statute. Here you actually impose the obligation of proving in addition to that the membership or agency and the purpose of the organization. What we attempted to do in the other was to deal directly with the act rather than the additional proof of membership and furtherance of purpose.

The CHAIRMAN. No, I have given much thought to the views you are now expressing and I beg your pardon, but I take the exact opposite view. I think that the degree of proof under Title V of the Civil Rights Act, passed or proposed, is measurably greater than here and we must come back to this problem or we have missed the point.

This is not a civil rights bill; it is much broader.

Now I take the view, for instance, that under Title V of the civil rights bill the element of proof is motivation based on race, color, creed, or religion. Now you don't have that here. When we say, for instance, that someone commits a kidnaping, that is it. It need not be related to race or color or religion. For instance, in my opinion, there are eight sections of these bills which could not possibly be reached under the Civil Rights Act.

Let me give just one illustration: Suppose, for instance a Klansman should kill or kidnap or assault a white atheist; you can't reach him under your bill. He does not believe in God; religion is not involved, race is not involved. But we do reach him. If he kidnaps, it is a punishable act of kidnaping, no matter why he does it. I think our bill is immeasurably broader and requires less degree of proof. You don't have to prove that the crime is related to race, religion, creed, and so on. So I am afraid I disagree with you.

The ATTORNEY GENERAL. I appreciate your view.

The CHAIRMAN. As I view it, anyway, it was intended, in my mind, to be really broader than under the civil rights bill.

The ATTORNEY GENERAL. I appreciate your point, the coverage of this. This is not a civil rights bill; it covers, I assume, such activities as that of—Cosa Nostra is included in this as well as the Klan.

The CHAIRMAN. Let me hasten to say I glory in the fact that so-called minority races, colored races, will be great beneficiaries of my bill. When I say it is not a civil rights bill, I don't mean to say that civil rights issues are not presented and that minority groups are not protected. I have always taken the view, however, that this bill really is broader than the civil rights bill and that the threshold proof of race, religion, or creed is not necessary here and that, therefore, a

crime is a crime here, as such, and you don't have to have the threshold proof of race, religion, or creed, and so on. That has been my point of view all along.

The ATTORNEY GENERAL. That is perfectly true, Mr. Chairman, and this has a broader coverage. I believe that as a practical matter, in so far as you are talking only about the Klan here, that generally the activities involved would also be covered as far as that particular organization is concerned by Title V of the Civil Rights Act, and I would be inclined to think as far as that particular organization was concerned that the proof might be easier under Title V of the Civil Rights Act. Now you are covering other organizations here which are not touched by the Civil Rights Act.

The CHAIRMAN. We are not in disagreement, may I say.

Mr. BUCHANAN. Mr. Chairman, could I just say in line with your point, sir, that, even with this particular organization, I believe our hearing covers a good deal of testimony in which a white person has been terrorized or beaten by a conspiracy, by other white persons, which would not be connected with race or color even with Klan-type organizations.

The ATTORNEY GENERAL. That probably would be under Title V, Congressman, because it does not govern only attacks by whites on Negroes or Negroes on white, it covers whites against whites if it is related to any of these purposes.

The CHAIRMAN. Let me give an illustration of the testimony in this record. In my own State of Louisiana—not in my district, thank God—we have a passage in our testimony indicating the Klans have the silly notion that the Invisible Empire, or some such foolish domain, has the right to regulate the politics, the thinking, the economy and everything else, and the morals of their own little community. In a certain little community in Congressman Jimmie Morrison's district, the Klan leaders decided unto themselves that a 17-year-old boy whose father was dead, whose mother was widowed, somehow was hanging around pool halls—that is the word—too much.

So what did they do? Well, that didn't conform to their notions of the morals of the community or how the community should conform to their little silly world, so what did they do? They seized that boy at night, they brought him into a wooded area, they lowered his trousers and beat his buttocks until the blood was all over the lot.

Now I say this kind of thing has got to be stopped, and it is in that sense, to take the word of our colleague from Alabama, that we are not relating this thing to color or race or religion vis-a-vis the Klan. The element of proof is probably less under this bill than would be under the civil rights bill because if it be done to a white atheist, or anyone else, it can be reached under this bill.

Perhaps I have belabored the point too much but I wanted to put it in the record.

Mr. WELTNER. Will the chairman yield?

Mr. Attorney General, under Title V of the 1966 Civil Rights Act there are three basic sections, (a), (b), and (c). Isn't it true that each of those contains the specific language that because of his race, color, religion, or national origin? For instance, Title V says, "Whoever, whether or not acting under color of law, by force, or threat of force * * * interferes with any person because of his race, color, religion," et cetera, and then it lists some nine activities. That is subsection (a).

Subsection (b) provides sanctions to any person on account of race, color, religion.

Then subsection (c) contains a reference to discrimination on account of race, color, religion, or national origin.

I simply point out that specific language because, while I agree that it is important that we have the specific legislation to prevent the deprivation of the rights of citizens on account of race, color, religion, or national origin, it is also important that we extend the power to protect the citizens of this country when their rights are deprived whether or not it be on the basis of race, color, national origin.

The ATTORNEY GENERAL. You are quite correct in that. I was simply trying to point out, which I think you would agree with, Congressman, that if you look at section (b) and section (c) of that Title V it does not confine itself to interracial incidents, that you can have the situation of a white intimidating another white in the situation, or you could have the situation of a Negro intimidating a white.

Mr. ASHBROOK. That is in the civil rights context.

The ATTORNEY GENERAL. It has to be in the context of specifically guaranteed Federal rights.

The CHAIRMAN. Yes.

Mr. POOL. Mr. Chairman, in line with what you just said, then, in the case of these riots in these cities one Negro intimidating another Negro could be handled in that same manner; is that correct?

The ATTORNEY GENERAL. Yes; if the purpose was to deprive him of one of these rights or to discourage people of that race from exercising them. I was saying if you had the situation of a Negro group that attempted to prevent whites from voting through intimidation or attempted to prevent other Negroes from voting it would just be just as much covered here as——

Mr. POOL. You have an organization called RAM, I believe. Is that what you call it?

The ATTORNEY GENERAL. Yes.

Mr. POOL. It is getting to be a real serious situation here. I understand they are using radio down in Cuba, some kind of a coded deal to send instructions to these liaison people to encourage riots in cities. I don't know enough about it; I am sure the Justice Department is keeping abreast of it. This bill here and the civil rights bill, does it cover the situation, do you think? Is it sufficient?

The ATTORNEY GENERAL. I think it could cover that kind of a situation depending on what was being urged and advocated in that situation.

Now, if they are advocating just sort of senseless violence with no relationship to any of these specifically guaranteed rights, I don't think it would be covered by Title V.

Mr. ASHBROOK. Not burning property, fire bombs, things like that?

The ATTORNEY GENERAL. They are not guaranteed specific Federal rights.

Mr. POOL. Will this Willis bill cover that? That is what I am getting at.

The ATTORNEY GENERAL. I can only answer that by saying it depends on what they are advocating and urging on other people. If they are just saying that you want to——

Mr. POOL. Has your Department made any kind of statement about this RAM organization or given the public any information on it, or are you still investigating it?

The ATTORNEY GENERAL. We are aware of the organization. I am inclined to think that the public accounts of this, such as, for example, a recent article in *Life* magazine, rather overstate its membership and effectiveness; but that such an organization exists, I think there is no question about it.

Mr. POOL. Somebody has been very effective in Los Angeles and Chicago and Cleveland; they are really doing a job of disrupting the community and destroying property and injuring people. I personally would like to try to get something in this bill to govern it if you can suggest it.

The ATTORNEY GENERAL. I would be happy to suggest. I would say, Congressman, I think at least on any evidence that I have, to say that these various incidents in the cities that you mentioned, what is going on there has been masterminded is a conclusion that I would not be prepared to come to at this point. That there have been people engaged in this, it is obvious that there has been some agitation from time to time by a whole variety of groups. I think it is clear, but I am perfectly willing to go into this and to look at the problem.

As far as investigation is concerned, we are keeping an eye on it. I would not want to create the impression that the activity of some of these juvenile gangs there has all been masterminded by Mr. Williams out of Cuba, or something of that kind.

Mr. POOL. Well, the civil rights leaders themselves disown this.

The ATTORNEY GENERAL. Yes.

Mr. POOL. And lament the fact that it is going on, and that is why I think it is very easily a conspiracy because it would be part of the Communist movement to do these things while we are tied up in Vietnam.

Mr. WELTNER. Mr. Chairman, may I direct the Attorney General's attention to section 407, which he previously touched upon as carrying with it certain constitutional limitations. Bearing in mind that the Smith Act has now been subject to constitutional interpretation for some 26 years, if I am not mistaken, and that we have a great body of law that hedges about any legislative enactment that in any way touches upon the advocacy of anything, would it not be true that, within the permissible constitutional area of the legislation, that this section—which specifically states that any person willfully advocating violence, intimidation, or hindering or preventing any citizen of the United States from enjoying any right, liberty, privilege, or immunity granted or secured to him by the Constitution and laws of the United States—that that section, constitutionally applied, would indeed provide criminal sanctions for an individual who incites others to riot where the inciting of riots is under the circumstance of present possibility of the urged conduct taking place.

The ATTORNEY GENERAL. I think that is right, Congressman; yes.

Mr. WELTNER. So bearing in mind the constitutional limitations and in response to Mr. Pool's question, section 407 would, indeed, provide criminal sanctions in the political arena making impassioned pleas for force and rioting. This section would provide sanctions for that.

The ATTORNEY GENERAL. Yes; I think that is right.

Mr. POOL. To come back to the question, then, is it hard to prove a case under the Willis bill, or would it be better under present laws or do we need a new law?

The ATTORNEY GENERAL. I think, Congressman, where other laws cover the action as in instances I have given, I think they would require easier proof and be an easier vehicle, but there are situations conceded which existing law does not cover which would be covered by this act. In that case, I don't have a choice of vehicles to take.

I think it is going to be difficult to prove the membership or agency in these situations.

Mr. POOL. That is unwarranted.

The ATTORNEY GENERAL. I just say I think it is going to be difficult to prove it. Also I have some problems in relation to language which is used there. When you talk about acting in furtherance of the purpose of the organization you have got to show that they were acting, it seems to me, in some kind of agency relationship. You put in "in relation to" to avoid that, I take it, or to broaden it in some respect, but then I get involved in some difficulties as to whether that is sufficiently clear.

For example, you have a clandestine organization and it is opposed to, oh, we will say integrated schools. Now if a member goes out and blows up a school you can show he is a member of that organization. I don't know whether that is in furtherance of or in relation to that purpose, if the purpose is not stated as an unlawful purpose. I just have that difficulty.

The CHAIRMAN. May I say in that connection, with the idea of curing that problem that you are talking about and which you recognize, someone made a proposal which I completely rejected at the word go, that maybe membership should raise a presumption. I cannot possibly conceive that, in a criminal statute, membership in should create a presumption that an action is the action of that organization.

I completely agree with your statement that it would be difficult indeed to prove agency in the normal sense of the word and possibly even that the words "in relation to" should be broadened by "furtherance of" or "in connection with." That is the sense of "in relation to" that, as I understand it, is intended to be conveyed, not to compel the Department of Justice to prove, for instance, that there was a meeting on the subject and that the members were advised of it, and so on. That simply does not take place. That is one of the evils of these organizations; they operate in cliques only. It shows that often only a few know what is going on.

I know you have read about the terrorist squads, and so on, that they have, which they do have. The members are not told about that, very few are in on it. So it would be a terrible job to have to prove agency in the sense that you and I know the word, because Klan organizations simply don't operate that way; they are not that frank with their members.

I have in mind that "in relation to" means in connection with the general objective and, in that sense, I think it can be reached.

Now I heard another person—and it may be in your mind, I don't know—suggesting that a provision in the bill dealing with—well, I will read it:

"Any person who, in relation to the business or activity of a clandestine organization, administers to another, or takes an oath or pledge to conceal from lawful authority of the United States any knowledge either may have, or which either may thereafter acquire, of the commission of any offense"—and so on—"commits an offense."

Now I have heard it said that some people have raised a question as to whether religious connotations are involved in this. Now it is my impression that, at least at State level, it has been made a misdemeanor in most States, for instance, not to report a crime. Now certainly this [taking an oath to conceal crimes] is worse. Forget the oath, this is a moral pledge or commitment to hide an offense, certainly to hide knowledge of an offense—which I think is far worse than merely not reporting a crime. If failing to report a crime can be made the subject of a misdemeanor, I think that taking a pledge not to report one, in the words of the statute, "pledge to conceal from lawful authority any knowledge of the commission of any offense," is a far worse situation than not reporting a crime. And in this instance the penalty, the fine is only $5,000 and imprisonment of not over 2 years at the discretion of the judge.

May I say that the committee screened, Mr. Attorney General, very carefully what the penalty should be in each instance. It has been my experience on the Judiciary Committee, and we have charge of all criminal statutes, that any time a statute is too ambitious and makes the punishment harsher than it ought to be, you are simply inviting no prosecution or *nol pros* or no effective enforcement of that law.

I remember specifically that some years ago an airplane flew over the State of Colorado. A son had put a bomb in the suitcase of his mother. When he blew his mother to bits the plane was wrecked and the other lives were lost. Then there was a hue and cry, "What, no law against that?" It is in the air, it is not reached, there is no law, let's make a law. Okay.

So the Judiciary Committee made the law and we made the penalty pretty severe. Do you know what happened?

Well, a year or so afterwards some commuter out of New York was going back home during the Christmas holidays and bought a package for his kids and he put the package on top where the hat usually goes, or the coat. Someone said, "What is in there?" and he said, "A bomb."

Technically that was a violation of that statute. What happened? Well, they tried to prosecute him and the jury would not convict because the penalty was too severe.

I am just saying that we have at least honestly tried not to make the penalty so ridiculous that we cannot convict.

I am firmly convinced myself, the hearings convinced me beyond a shadow of a doubt, that klanism is an evil; it ought to be punished, and there should be a statute under which prosecution may be commenced and undertaken and concluded; not only commenced and concluded but that effectiveness and conviction can be had.

In our opinion this bill would provide you that, try to anyway.

Mr. WELTNER. Mr. Chairman, may I return to the question of agency, obviously where it does constitute an element of the offense as an added burden of proof. Now section 407, which I conceive to be a very important section notwithstanding the constitutional limitations on what we try to do here, I would like to point out once again that this section does not necessarily require any proof of agency when the offense is that which would come within section 407(a)(2). Section 407(a)(1) refers to a plan for clandestine organization. Sec-

tion 407(a)(2) simply prohibits any person from willfully advocating the use of force and violence to prevent or hinder citizens in the enjoyment of any right guaranteed by Federal writ. I simply want to make that point plain because under those circumstances there is no burden of agency proof.

Mr. Chairman, if it is appropriate we have discussed several aspects of the criminal portion of this bill, and if it is the chairman's pleasure, I would like to turn to section 412, if I might, and direct just a few questions on page 10 with regard to injunctive relief aspects of your bill.

The CHAIRMAN. Let me say, Mr. Weltner, that is your handiwork and the committee has been grateful to you in injecting this thought for having injunctive relief. I, too, don't like our criminal statutes of course to reach crimes by injunction. But to reach things that way in their incipient stage is so important that I think the injunctive relief that you propose, Mr. Weltner, is completely appropriate and we are very grateful that you suggested that it be made part of this bill.

Mr. ASHBROOK. Could I ask one more question on 407 before you leave?

Mr. WELTNER. Yes.

Mr. ASHBROOK. I think maybe we skimmed by a very important point the Attorney General made and I certainly wrestled with it and the chairman mentioned it. This is the opposite of what we said before the Smith Act of the Communist Party where, you know, their intention, it is stated, has some relation to the overthrowing of the country.

In the Klan, if there is anything our hearings showed it is that they hold out to the public they are a Christian, conservative, patriotic organization, nowhere openly or publicly do they advocate violence.

Now we know that, within the Klan, at the same time, this goes on. Is this, in your opinion, a burden that is going to be impossible to carry, or do you think that there is some way that the Justice Department can, through agency, bring this in? You cannot skirt it, I don't mean avoid it, but you mentioned the problem and never really said whether you thought it was an insurmountable obstacle. That is certainly my thinking—how we can get around this.

An organization holds itself out to be one thing; is it literally an impossible burden to prove what we know to be the true Klan?

The ATTORNEY GENERAL. Well, Mr. Weltner pointed out you don't have that problem under (a)(2) on this.

The CHAIRMAN. That is the broader provision of the section.

The ATTORNEY GENERAL. Under (a)(1), as you point out, Congressman, you can have a variety of clearly lawful objectives.

Mr. ASHBROOK. Open.

The ATTORNEY GENERAL. Perfectly open objectives, as you can have an open objective by attempting to get the law or Constitution changed with respect to rights enjoyed by any groups or the repeal of any criminal laws that presently exist. These would all be perfectly lawful objectives which you could not prosecute somebody for having. As long as they were going to use proper political means to amend the Constitution of the United States or repeal the laws of the United States, or something else, there is no prohibition against advocating integrated schools or advocating segregated schools as an objective, attempting to accomplish that.

Now here you are saying but if somebody who happens to be a member of that organization, of a clandestine organization, advocates an unlawful means for doing that, I don't know whether the furthering or accomplishing any purpose or objective really adds very much to the bill except some further proof.

If he advocates violence, force, intimidation, or unlawful means, to the extent we can constitutionally reach that, we can reach it for a nonmember just as easily as a member.

Mr. WELTNER. The evil is the same at any rate; is it not, Mr. Attorney General?

The ATTORNEY GENERAL. I would think so. Of course in this situation, as I read section 407(1), this is any person here and the person is defined as an individual or organization. So in 407(1) you are not requiring him to be a member of any organization if he happens to advocate something that furthers the purpose of that kind of an organization.

Mr. ASHBROOK. That is why you have some problems. Then you don't look upon it as an insurmountable task even for this section if it becomes the law of the land? That is what I am getting at.

The ATTORNEY GENERAL. I would not go that far. I have difficulty with it. I always have some reservations about a law, Congressman, that I think is going to be difficult for the Department to effectively enforce because of difficulties of proof. In saying that, I am not saying anything critical of the efforts of the committee. I would like to reach these activities also, but when you have that kind of a law then because of your difficulties of proof you can't make it effective.

There is quite often a certain amount of comment that you are not really enforcing the law and perhaps less public appreciation of the difficulties of proof that you encounter in these situations. I would hate to have the public think here is a law that is going to effectively eliminate Cosa Nostra and the Ku Klux Klan and any other group that you want to name of this kind and then find that we have so much in the way of problems of proof that we are not doing it. Then I know that the Department would be subjected to criticism.

Now you have got the law, why aren't you enforcing it? I think some of these problems of membership and "relation to" and "furtherance of" and agency are going to present very difficult problems with secret organizations there if they divulge any information about any of these activities. I just put that as a caveat or reservation.

Mr. ASHBROOK. Thank you.

The CHAIRMAN. Would my views of trying to define what "in relation to" meant; "in furtherance of," "in connection with," and so on, make it broad enough to help that out?

The ATTORNEY GENERAL. I think it might very well be helpful, Mr. Chairman. I think it is going to be tough in any circumstance, and I want to make that clear.

The CHAIRMAN. I confess that Klans are not frank with their own members; they do things without resort; they don't have formal resolutions on their crimes. If we would be required to produce trick agency, as we know that term, it would be an awful burden on the Department of Justice. I would be the first one to concede that. I am trying to say this as an aid to the interpretation of what we mean by "in connection with," "in furtherance of," and so on.

The ATTORNEY GENERAL. On the one hand the broader you get the greater the constitutional problems and on the other hand the narrower you get the greater the problems of proof. This is the dilemma.

Mr. WELTNER. With the chairman's permission, I would like to turn to section 412 which, as you know, Mr. Attorney General, provides for the initiation by the Attorney General in a district court of an application seeking for relief against a criminal conspiracy, that term "criminal conspiracy" being defined as any group that uses or employs violence and intimidation for the purpose of depriving citizens of rights guaranteed by the Constitution or laws of the United States.

Under your administration of the Department of Justice you won, I think, a significant victory in the District Court for the Eastern District of Louisiana——

The CHAIRMAN. And I said that in my opinion it would go down as a landmark decision, and I so regard it.

Mr. WELTNER. I certainly regard it as that, Mr. Chairman, because Judge Wisdom and his colleagues on that three-judge court in hearing application for injunctive relief brought by the Attorney General were faced with the problems as a lawyer I know many times faces judges. They know what needs to be done and what ought to be done and what has got to be done, and they have to strain mightily to find some thread of statutory authority upon which to see that done.

I sympathized with the judge as he went through his mental gymnastics in an effort to find a statutory authority upon which to base the issuance of injunction against the Original Knights of the Ku Klux Klan. I think the significant part of that decision is on page 21 where it says, as follows. After a long review of the evidence and the difficulties that beset many citizens in that community, Judge Wisdom said:

> However, in communities hostile to civil rights and resentful against "outside", that is federal interference, injunctive relief may be the most effective method of enforcing civil rights.

Then further, he states that, in sum, the previous civil rights legislation does not of necessity provide the most effective relief to either complain to the local police or soothe the damages:

> The most effective relief for him and for all others affected by the intimidation may be an injunction by the Nation against the private persons responsible for interfering with his civil rights.

Now that being the case and that decision coming out of the southern court by southern judges and dealing with some of the problems that we have dealt with in the Klan here, it seemed to me a sound basis for drawing a clear statutory basis for the extension of equitable or injunctive relief.

As you know, the term "criminal conspiracy" is defined so that it includes any group of whatever motive or whatever political, sociological, or economic outlook wherever located or whatever race, color, creed, religion, or national origin that seeks to use force and violence to deprive citizens of rights.

I would like very much to have your comment on the proposed section 412 of the chairman's bill.

The ATTORNEY GENERAL. I think, Congressman, that as a general proposition we have always been opposed to injunctive relief where the commission of criminal offenses was involved. Now there have been

exceptions to that and, for the reasons that you pointed out, there are situations where there really have to be exceptions to that, as the court said, in order to get effective relief. That situation existed on a widespread scale in Bogalusa at the time that we went to court for the injunctive relief that you are indicating. We had a great deal of proof that a good deal of the problems in that community, the disruption of law and order in that community, the failure of local authorities to take appropriate action with respect to it was the result of Klan activity by a number of named Klan people as a Klan policy within that to make it very difficult for officials to maintain law and order in that community.

The CHAIRMAN. May I say that I heard it said that you were so well prepared to go forward with the proof that, in the words of Judge Wisdom, the defendants in that case made some very damning admissions which lessened the need for proof that you would normally have had to go forward with.

In connection with what Mr. Weltner said vis-a-vis that decision, I must agree with you that Title V of the Civil Rights Act that you were talking about a while ago, under that decision its problems are very well eased, as well as those under my bill.

The ATTORNEY GENERAL. Yes, sir. What I was trying to point out here was the kind of general authority which you provide in this for injunctive relief would seem to me to be wisely confined to that type of situation where other remedies—that is, the ordinary criminal prosecutions—simply are going to be ineffective to deal with a situation where widespread activities are occurring, where you can relate these to your criminal conspiracy very directly and by quite persuasive, quite massive evidence.

Apart from that, I would think we ought to attempt to stick with the proposition that crimes are usually punished after the fact by your normal processes not involving the difficulties of all your proof problems or your summary punishment to some extent, and so forth.

With the understanding that the power that is given here should be used extremely circumspectly in those types of situations, I don't have any quarrel with the section. I think it is drafted—as it reads—it might give the impression that every time you had a criminal conspiracy you could just go in and enjoin its members. I don't think that is the way to deal with it. I think where that is making local law enforcement difficult, where the threats and intimidations are such that they can't be effectively handled by criminal prosecution afterwards, then I think the existence of injunctive relief is important to it, and a good idea.

(At this point Mr. Ashbrook left the hearing room.)

Mr. POOL. Mr. Attorney General, let me ask you this: Is it broad enough to strengthen the Government's hand if it wanted to be used in a case of—say the Teamsters Union had a nationwide strike. Is it that broad?

The ATTORNEY GENERAL. I would not have thought the Teamsters Union would have fitted into this language here.

Mr. POOL. Should it not be tightened down a little bit?

The ATTORNEY GENERAL. Well, I was suggesting either it should be tightened down or it should be clear from the legislative history——

Mr. POOL. Spelled out.

The ATTORNEY GENERAL. The reasons that Congressman Weltner suggested why this is important to have, it is a pretty broad power to give and it is one that I think should be used within our system pretty circumspectly, and I think I would agree with you on that.

Mr. WELTNER. I would certainly agree that was the case. If Mr. Pool will yield for just a moment, this section applies only to criminal conspiracy as previously defined in the legislation.

The ATTORNEY GENERAL. Yes.

Mr. WELTNER. That being the case, and the power resting in the Attorney General and at his option, the specific language being "the Attorney General may institute for the United States," and the legislative purpose, as displayed in both the witness' response and in this colloquy, being that this should be used only in those cases where suits for damages, local law enforcement efforts, and the initiation of criminal proceedings are ineffective to prevent criminal conspiracies. That is the background, I would suggest, to use the Federal power.

The ATTORNEY GENERAL. Yes.

Mr. POOL. Mr. Weltner, will you point out in the bill where it limits it? I have read it and I don't seem to find it here. How do you limit it to what your clandestine organization is and things like that?

Mr. WELTNER. Well, it is limited only to a criminal conspiracy which is defined at page 4 in section 403(a).

The CHAIRMAN. I think what you are saying is a labor union would not fit.

Mr. WELTNER. If a labor union were advocating teaching or employing acts of violence, intimidation, or harassment for the purpose or having the effect of coercing citizens, denying them rights guaranteed by the Constitution, that would be the standard. It would not be as a labor union but they might be subject to injunction. It would be as an organization that was engaged inherently in the act.

The same can apply to a 4–H Club. If a 4–H Club were engaged in acts of violence depriving citizens of their rights, that could be in the definition of criminal conspiracy.

Mr. POOL. If a labor union, in effect and in fact, had become a monopoly, more or less, and had a trust setup there, and there is no law which a labor union is under like the antitrust laws, could this be used?

Mr. WELTNER. Not unless it advocated force and violence to deprive citizens of their rights. That is the hallmark of my section and the definition of criminal conspiracy. It matters not under this provision whether or not an organization claims itself to be patriotic or subversive; whatever its view or whatever its preachments are, the question is whether or not it uses or employs force or violence to deprive citizens of their rights. That is the only basis upon which it could come within the scope of section 412 because 412 would apply only to a criminal conspiracy as so defined.

The ATTORNEY GENERAL. Perhaps, Congressman, since those sorts of activities by labor unions are already subject to the injunctive relief it would solve Mr. Pool's problem if labor unions just were not included in this.

Mr. POOL. That is what I was thinking, that is why I brought that up.

The ATTORNEY GENERAL. There are already provisions with respect to violence, and so forth, in connection with labor disputes.

Mr. Pool. I think if we had labor worried about something like that, it might hurt you on the floor. That is why I brought it up.

Mr. Weltner. Mr. Attorney General, one further question. Also under your administration there was a very interesting development in the city of Chicago with reference to one Sam Giancana whereby a grand jury extended to him immunity from prosecution. He was propounded several questions and, having immunity, his claim of privilege under the fifth amendment was rejected and he was accordingly held in contempt of the grand jury and detained for purging himself. That was a series of moves and that specific procedure has now been quite clearly approved by the Supreme Court of the United States.

Am I correct in that?

The Attorney General. Yes. At least it has not been disapproved, Congressman. It has been approved, so far as the recent cases, as to the possibility of using the criminal contempt sanction was concerned.

The Chairman. This final thought: We appreciate very much and recognize the difficulties about the degree of proof that might be required under my bill. I think, though, that this problem is considerably alleviated by the fact that section 413 provides for immunity and also for a very strong contempt provision proceedings. I think that would help in alleviating the proof difficulty we would be talking about, because immunity is provided where a witness can come forward and not be involved in fifth amendment problems, and so on, under the Immunity Section, 413.

With that I have no more questions.

Mr. Weltner. I have just one further question, Mr. Chairman.

Mr. Attorney General, I take it there is no constitutional problem in the language contained in section 413.

The Chairman. I think this problem relates to clandestine organizations and not to the criminal conspiracy section. That is the way I understood him, anyway. Isn't that so, Mr. Attorney General?

The Attorney General. Yes, I think so.

The Chairman. I think so. I don't think the same problems are presented.

Mr. Weltner. It is not a question of proof but of the constitutionality and procedure of the extension of immunity under circumstances outlined in Title IV in section 413.

The Attorney General. I read this, Congressman, and perhaps I am mistaken, I don't think it reads very much different than existing immunity provisions. You refer to an extension of this. You would be referring here to the last sentence about——

Mr. Weltner. We have made an effort in drawing this to make quite clear that the grant of immunity would be a thorough, full, complete, and total grant of immunity and that of course would be very sparingly exercised upon the judgment of the Attorney General and of the court having jurisdiction over the matter.

If there is any indication of doubt with regard to the constitutionality of the procedure contemplated by section 413, I would like to have that. If there is no doubt, I would like that to be shown, too. I have no reason to doubt specifically in light of the recent pronouncements of the Supreme Court that this section is thoroughly in accord with constitutional procedures and due process.

The ATTORNEY GENERAL. I think you can extend immunity in this regard under existing law as it has been interpreted today unless there is a whole shift of attitude about immunity provisions. I think there is a problem. I don't think it comes up here because you are providing for no more than the 6-month sentence after trial by the court, with respect to immunity.

Now whether you can extend that as far as you have extended it, that is with the jury trial, I take it it is five thousand and ten years.

Mr. WELTNER. Prosecution for criminal contempt by the court and the jury.

The ATTORNEY GENERAL. Yes.

Mr. WELTNER. Yes.

The ATTORNEY GENERAL. Yes. Now as to that, it seems to me it is only fair to say you are breaking some new ground as to how far you can punish that kind of contempt.

Mr. WELTNER. What would you think would be appropriate sanction?

The CHAIRMAN. Five years, not ten?

The ATTORNEY GENERAL. Five years.

The CHAIRMAN. Because that makes a difference.

The ATTORNEY GENERAL. I just do not know, Congressman, because I just think this is something that the court has never passed on. What has always concerned me about it is how severely you can punish a failure to talk after immunity is given and I don't know how far the court would go on that.

For example, you take the existing law. I am persuaded that if you do, as happened in the Giancana case, if you hold a man until he purges himself, for the life of that grand jury, that the court is not going to permit you to ask him the same questions at the next grand jury and then hold him for another 20 months and by bringing him up every 20 months to keep him in jail for the rest of his life. I just can't imagine that that would be approved.

The criminal sanction of simply 6 months with respect to this has been the case. Now whether Congress in exercising the legislative power can punish that more severely, I don't know. What, quite frankly, concerns me is that there would be some reconsideration of the whole doctrine of immunity which is valuable for us and that, if the court felt the sanctions here were too strong, rather than throw out the sanctions it might modify the law of immunity in a way which I think would me unwise. I don't predict that it will, but it puts an issue that for the severe penalties here I would want to think about as to whether or not we really desire to make a test on that at this particular time.

Mr. WELTNER. I am sure the chairman will want to clear it.

The CHAIRMAN. Mr. Attorney General, we are so grateful to you for giving us all this morning of your valuable time.

There being no further questions, the committee will stand in recess until tomorrow morning at 10 o'clock.

(Whereupon, at 11:40 a.m., Wednesday, July 20, 1966, the subcommittee recessed, to reconvene at 10 a.m., Thursday, July 21, 1966.)

HEARINGS REGARDING H.R. 15678, H.R. 15689, H.R. 15744, H.R. 15754, AND H.R. 16099, BILLS TO CURB TERRORIST ORGANIZATIONS

THURSDAY, JULY 21, 1966

UNITED STATES HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE OF THE
COMMITTEE ON UN-AMERICAN ACTIVITIES,
Washington, D.C.

PUBLIC HEARINGS

The subcommittee of the Committee on Un-American Activities met, pursuant to recess, at 10:15 a.m. in Room 429, Cannon House Office Building, Washington, D.C., Hon. Edwin E. Willis (chairman) presiding.

(Subcommittee members: Representatives Edwin E. Willis, of Louisiana, chairman; Joe R. Pool, of Texas; Charles L. Weltner, of Georgia; John M. Ashbrook, of Ohio; and John H. Buchanan, Jr., of Alabama.)

Subcommittee members present: Representatives Willis, Pool, Weltner, Ashbrook, and Buchanan.

Staff members present: Francis J. McNamara, director; William Hitz, general counsel; Alfred M. Nittle, counsel; Donald T. Appell, chief investigator, and Philip R. Manuel, investigator.

The CHAIRMAN. The committee will come to order.

We are pleased to have with us this morning three distinguished representatives of the Anti-Defamation League of B'nai B'rith.

We will be glad to hear from all three of them. It is my understanding that probably the most satisfactory way would be to introduce one, and he in turn would present the next. So the Chair recognizes as the first witness this morning Mr. Mayer Newfield of Alabama.

Mr. Newfield, we are delighted and pleased indeed to have you.

STATEMENT OF MAYER NEWFIELD, ON BEHALF OF THE ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH; ACCOMPANIED BY IRVING KALER, MEMBER OF THE SOUTHEASTERN REGIONAL BOARD OF THE ANTI-DEFAMATION LEAGUE, AND JUSTIN FINGER, DIRECTOR OF FACT FINDING OF THE ANTI-DEFAMATION LEAGUE

Mr. NEWFIELD. Thank you very much, Mr. Chairman.

We appreciate very much the opportunity of appearing before the committee.

I represent the Anti-Defamation League of B'nai B'rith. I am a member of the National Commission of the ADL, which is its top governing body. I am an attorney practicing law in Birmingham, Alabama.

We appreciate very much the invitation to present our views and recommendations on ways of dealing with the threat to law and order and our American system of free government that is posed by the campaign of violent terrorism and intimidation being waged by such organizations as the Ku Klux Klan.

If I may be pardoned a personal reference. I should like to tell the committee that as a young boy in Birmingham I became disillusioned and terribly disappointed with the Klan. I had been reading such books as Thomas Dixon's *The Klansman*, and had seen the early moving picture "Birth Of A Nation."

One day I recall asking my grandfather, who lived with us, if he had ever been a member of the Klan. My grandfather fought during the Civil War with the Army of Northern Virginia under Jackson and Lee with a Mississippi regiment, and I was quite disillusioned and disappointed when he replied that he had not been a member of the Klan. I asked him if it was because the Klan was not present in Natchez, Mississippi, where he then lived. He said no, the Klan was present, but he had declined to join the Klan because he saw very readily that the patriotic motives and the high ideals which they espoused had been distorted and that individuals had come to power in the Klan who had committed outrages and who were operating in violation of the law and were using the Klan as a tool to carry out their own ideas for personal vengeance.

The CHAIRMAN. May I say that the record of our hearings brings up to date identical information about current Klan operation.

Mr. NEWFIELD. Yes, sir.

B'nai B'rith, which was founded in 1843, is the oldest civic and service organization of American Jews. It represents a membership of more than 400,000 men and women and their families. The Anti-Defamation League was organized in 1913 as an arm of its parent organization to advance good will and understanding among all Americans, to translate into greater effectiveness the ideals of American democracy, and to combat intergroup hatreds, prejudice, and bigotry as well as extremist threats to our free institutions.

Since ADL is dedicated to the preservation of the basic and democratic rights guaranteed to all citizens by the United States Constitution and to the public exposure of subversion and threats to our freedoms, our organization has long been concerned with the activities and operations of such groups as the Ku Klux Klans.

At the outset, Mr. Chairman, we want to commend you and the other members of this committee for your courage in attacking the problem of Klan terror in the series of hearings. After all, where terror reigns no one, not even a Congressman, is immune. We want also to associate ourselves with the remarks made yesterday by the Attorney General and the distinguished chairman of the House Judiciary Committee, who praised the careful and thorough investigation of the Klan which your committee conducted over a period of more than 6 months.

These hearings have helped to spread on the uncontroverted public record the shocking story of the Klan's organized terrorist activities. In so doing, the committee has performed a most useful function and made clear the need for remedial legislation to curb Klan terrorism and intimidation.

At this point, I should like to introduce my colleague, Mr. Irving Kaler, a distinguished member of the Atlanta Bar and a member of the Southeastern Regional Board of Anti-Defamation League. Mr. Kaler will present some of the factual background of Klan activities in Georgia, Alabama, Mississippi, and elsewhere.

Mr. Kaler.

Mr. WELTNER. Mr. Chairman, it is a pleasure for me to welcome all these gentlemen, and particularly my constitutent and friend, Mr. Irving Kaler, here today. I think, Mr. Chairman, with your permission it would be well to have this committee acknowledge the debt of gratitude it owes to the Anti-Defamation League and to its very effective and dedicated and hard-working staff.

David Brody, has been of great assistance to this committee; Ted Freedman also has been of tremendous assistance to us. They are here today. I am grateful for the personal assistance and friendship they have given to me on this matter. Mr. Kaler comes here well qualified to speak not only as a lawyer and as a distinguished citizen of our community, but as one who has long maintained an active and vigorous interest in community affairs and in the betterment of our area.

The CHAIRMAN. As chairman of the committee, it is a pleasure for me to acknowledge the great contribution made by your fine organization and its spokesmen here this morning.

Mr. KALER. Mr. Chairman and Members of the Committee: I appreciate the opportunity to appear today in behalf of the Anti-Defamation League of B'nai B'rith. I am particularly gratified to be here because you know a distinguished member of this committee is Congressman Charles L. Weltner, who is the Congressman from our Fifth District, and we very proudly acclaim him.

Our State, Mr. Chairman, and honorable members of this committee, has a proud record of contribution to our Nation's strength. Nevertheless, it is an uncontested fact that where terrorism, violence, and bigotry have besmirched our State, the Ku Klux Klan more often than not has been responsible.

Here in the privileged confines of this room, it may be difficult to imagine the extent to which the Klan can undermine a community, a State, a Nation. To illustrate, let us suppose that you are a lieutenant colonel in the Army Reserve. You have been at Fort Benning, Georgia, for summer training—training essential to your military career, training necessary for service in Vietnam or wherever you might be sent.

Your training completed, you are in a hurry to get home to your family. So you drive through the night with two fellow officers toward Washington, D.C., where you live.

Suddenly, just outside of Athens, Georgia, home of the University of Georgia, you are overtaken by a car of nightriders. A shotgun fires. Your journey ends on a lonely highway in Georgia.

Why did this happen to Lt. Col. Lemuel Penn of Washington, D.C.? Simply because of the color of his skin, he innocently became the focal point of Klan hatred.

As a result of this brutal murder, four Klansmen were indicted. Two were tried in a State superior court and acquitted.

But later six Klansmen were indicted by a Federal grand jury and two men—the same two acquitted in the State superior court—were found guilty. This time the charge was conspiracy in violation of a Federal statute. And this time the trial was in Federal court.

The facts were essentially the same. In the State court, the Klansmen were acquitted; in the Federal court, two were convicted.

We may well ask ourselves how the different results occurred. I believe much of the answer lies in the annihilation of free will that occurs when the Klan is operating in a community.

We saw the same thing in Hayneville, Alabama, where four Klansmen were charged with murdering Mrs. Viola Liuzzo. Again there was no conviction in the State court. It would not do so despite the fact that one of the four was an FBI informer and provided detailed testimony about the murder. Klansmen roamed the courtroom. During a break in the trial, one came forward to inspect the evidence that had been presented.

In both the Georgia and Alabama cases, the Klan oath became a means of subverting the judicial process. In both cases, key witnesses were accused of violating their Klan oaths by testifying in courts of law. In the Alabama case, the FBI informer was charged by the defense with dishonoring his Klan oath. In the Georgia cases, a witness who had been a Klansman was able to point out that his Klan oath had expired and, therefore, he was relieved of this burden and could testify.

The CHAIRMAN. May I say at this point, sir, that it was quite an experience to preside over these hearings and to see how Klansmen welched on their own oath. Instead of relying on it, they took refuge under the fifth amendment, which we have always recognized, but the use of which they have attacked when it has been invoked by other elements in our society. It was quite an experience to see them.

In other words, I put the question directly to them, "I understand that you are not relying on your Klan oath of secrecy as a reason not to testify; rather, you are taking refuge in the fifth amendment. Is that correct?" They all agreed.

Now it seems to me, if they had the dedication which they profess for klanism and the pride of membership that they say they have, one of them would have had the guts to say, "I'm here, not invoking the fifth amendment, I stand on my oath as a Klansman." Not one of them had the guts to do it.

Mr. NEWFIELD. Right. It is ironic.

The CHAIRMAN. I say that legally they were right in not relying on the Klan oath; it would not hold water in my opinion. The point is, that with all their protestations of Americanism and anticommunism and all their other claptrap, I think it is appropriate for me to say that I was rather startled to see that not one of them had the guts to say, "I'm a Klansman, I am proud of it; I am not invoking the fifth amendment, I am standing by my oath as a Klansman because I am proud to be a Klansman." Not one of them had the guts to do that.

Mr. KALER. Mr. Chairman, from the time he served as an Assistant Attorney General more than 21 years ago, Judge Duke of the criminal court of Atlanta has been one of the most vigorous opponents of the Klan in the Nation. Last October he wrote a letter in which he outlined information which had come to him of a recent Klan conspiracy.

This included secret plans to assist Klansmen arrested and prosecuted and steps to prevent witnesses and jurors from carrying out their duties in courts of law.

This is a portion of the official letter that he wrote:

> The most insidious evil growing out of the Ku Klux Klan conspiracy is the one which teaches its fellow members and travelers to pervert and subvert public justice and to disrupt the oath of truth and the oath as a juror in any instance where the interest of the Ku Klux Klan or a fellow member may be at issue.

In October of 1965, Judge Duke called upon Governor Sanders to revoke the charters of Klan units operating in Georgia. Further quoting Judge Duke:

> Proof is available in abundance that the Ku Klux Klan carries on its affairs for the purpose of disseminating racial and religious prejudice, intolerance and hatred, that it spreads false propaganda for the purpose of inciting its members and fellow travelers to acts of violence which disrupt and destroy the public peace and tranquility of the state.

It is a well-documented fact, Mr. Chairman, that the Klan has succeeded in infiltrating law enforcement agencies and courts. A famous KKK photograph of the 1960's shows a Klansman opening his robe wide to display the police uniform underneath. In some southern communities, the police station or sheriff's office has been known to be the local Klan headquarters. More than one judge, prosecutor, or juror—as Judge Duke has noted in his letter—has been known to be friendly to the Klan. And where the influence of the Klan is heavy—usually out of proportion to its actual size—witnesses and juries and elected court officials are apt to be cautious about offending an organization whose members may be packing the courtroom.

Said a bold young Methodist minister in Philadelphia, Mississippi, where Klansmen have been implicated in the murder of three civil rights workers:

> For all practical purposes, the Klan has taken over the guidance of thought patterns in our town. It has controlled what was said and what was not said.

The coercion applied by the Klan often cuts deeper than is suspected. It can even put an end to constitutionally guaranteed free speech.

Thus, the citizens of Bogalusa, Louisiana, were warned in leaflets that anyone who attended an address by former Congressman Brooks Hays, "will be tagged as integrationists and will be dealt with accordingly by the Knights of the Ku Klux Klan."

The owner of a radio station participated in inviting Congressman Hays to Bogalusa. He was threatened and harassed (as were others in Bogalusa), his car windows were smashed, nails were driven into his tires, his station transmitter was fired upon by a shotgun, and his advertisers withdrew. Eventually he was compelled to leave Bogalusa. Under Klan pressure, the invitation to Congressman Hays was withdrawn and the address was canceled.

Similarly, the Klan seeks to interfere with one of the most basic rights of all in a democracy, the right to vote.

Where Negroes attempt to register and vote, such incidents as cross-burnings, bombings, church-burnings, beatings, and nightrider violence often occur. Such incidents continue to occur even after passage of the Voting Rights Act of 1965.

For example, a local union official who was active in the Northampton County voters movement in North Carolina was the target

of a cross-burning and a beating by white men. At Bertie County, North Carolina, a cross was burned in a field beside the home of a Negro woman who had been active in a registration drive.

And in west Tennessee, just after a cross had been burned near the city limits of Brownsville, an explosion wrecked one side of the home of a member of the Haywood County Voters League.

And finally, Klansmen have been charged with the firebomb death early this year of Vernon Dahmer, the leader of a registration drive at Hattiesburg, Mississippi.

Here is a shocking fact: from the period of 1959 to date, there have been at least 850 recorded instances of violence and intimidation, including 26 bombings of churches and 103 bombings of homes.

I caution that we should not assume that all the Klan activities and Klan poison is confined to the South. As the Klan itself boasts, its memberships spread across the Nation—into Ohio and Indiana, into New Jersey and New York. Often the Klan operates behind such fronts as "gun clubs" and "sporting" organizations. These organizations provide the bedsheet behind which Klan units conceal arsenals of hate—guns, bombs, and dynamite.

The Ku Klux Klan is at war with the United States. It is the avowed enemy of U.S. laws and traditions. It is an underground organization with the frank goals of subverting individual rights, terrorizing groups of people and whole communities, and promoting strife. Around the world, the hood and robe are symbols of bigotry in its ugliest form.

Nathan Bedford Forrest directed the Klan to disband in 1869. This Confederate general, who was its organizing spirit, realized that it could not be kept under control and that it would grow more irresponsible, more reprehensible, and more dangerous. Almost 100 years have passed, and the Klan is still with us. More evil than ever, more dangerous as a vehicle of bigotry and hatred, it has spread its terror over not only a good portion of the South, but many of the States in the East and the Middle West and has made evil alliances on the Pacific Coast with equally dangerous predatory groups.

At a time when our Nation might otherwise take justifiable pride in bold advances, the Klan, and those spirits kindred to it, remain not only an ugly anachronism, but a malignant growth upon our social organism. It stands for the terror by night that no free man can or will endure. Our national conscience mandates that it be extirpated.

Mr. Chairman, I would like to just close with one note. As our Congressman will verify and as evidence of the gathering comprehension of the people generally about this menace, I discussed this statement with many of our elected officials of the State and many citizens in the Congressman's district, and the sentiments which I have expressed are endorsed totally and completely and unanimously by all to whom I spoke. Therefore, we are authorized to conclude that the doing away of this menace is something which is desired and an ambition which is shared by citizens generally throughout the State.

The CHAIRMAN. Thank you very much.

In short, you made three points that I noted mentally. You mentioned the oath taken by the Klan to conceal a known violation. That is dealt with under section 409 of our bill.

Then you talked about portions of the law enforcement officers being members of this hooded organization. Here is what I said in the talk I made in my own town on that subject:

> The Committee investigation shows that the vast majority of law enforcement officers in Klan areas are sincere, dedicated men. Unfortunately, however, it also reveals that some law enforcement officers, though this is true of only a very small minority, are Klan members. We have placed in the hearing record the Klan oath. The wording of this oath is such that, if a law enforcement officer should join the Klan and become a dedicated member of it, placing this oath above all others, he would put himself in the position of not being able to fully discharge his duties as a sheriff or policeman, as the case may be.

In other words, it is simply impossible to be a good policeman and a good Klansman. One is good, the other is evil, and you can't mix them.

Now finally you talked about practices of harassment, and so on, vis-a-vis my good friend Brooks Hays and the incident that happened in Congressman Morrison's district. Some time ago I made a speech on the floor of the House—I forget the date, it is in the *Congressional Record*—and I was forced, because some friends said I should do it, to disclose to my fellow Members some of the threats of violence and acts of intimidation practiced on me and even my good wife.

I remember on one occasion I mentioned being engaged in making a speech at a certain Catholic institution in my district where I was warned by certain people, Government agencies, that I would be visited and I would have trouble-makers. They came, four cars with 20 hooded members from other areas of my State. The things, I said on the floor, that they had to say about me and the Catholic institution I was talking before were so downright filthy and vile and dirty that I don't think that my mouth could come out with their expressions, but I have recordings of it, I have the evidence, I know who they are.

I agree with you that this sort of thing must simply be stopped; it is intolerable in America.

I might add to my statement on the floor that at all hours of the day while I was at home and at night when I was home they would telephone Mrs. Willis and do such silly things as breathe loudly in the phone to frighten her and tell her the most vile things about races and all that stuff, trying to plant suspicion in her mind about me, for instance, about my association with certain groups, and made her so nervous it could have been partly responsible for a serious threat on her life later on, one for which she had to be operated on. So I know what you are talking about. I have lived through it myself and I completely agree with what you have said.

Mr. NEWFIELD. Mr. Chairman, if I may, I should like to resume my own presentation.

The CHAIRMAN. All right, sir.

Mr. NEWFIELD. We appreciate very much the presentation made by Mr. Kaler.

The ADL has long recognized that Klan terrorism and violence, Klan patterns of vigilantism and intimidation, and Klan preachments of racial and religious bigotry pose a danger to our free American way of life. We of the ADL profoundly believe that the invasion of the civil rights of any individual, regardless of race or color, or any group, because of race, religion, nationality, or ethnic origin, threatens the

rights of all Americans and tends to undermine the foundations of our Republic.

It is a plain fact of life in the America of the 1960's that the Klans in some States of the Union are waging race warfare and promoting religious bigotry and that Klansmen and their henchmen are undoubtedly responsible for a large portion of the violence, the killings, the bombings, and the arsons that have taken place in Southern States in recent years. Their tools in this campaign of terror, as your committee well knows, are the shotgun, the rifle, the pistol, the bull-whip, the gasoline-soaked rag, and the cluster of dynamite sticks.

Some of the statistics of this campaign of race warfare being waged by the Klans and their allies are appalling stains on the fabric of our democracy. An ADL study of the Klan and violence in the South, published in May 1965, disclosed the following:

Approximately 1,000 reported instances of racial violence, intimidation, and reprisal since 1955;

More than 40 individuals concerned with civil rights movements killed since 1959;

Some 227 bombings between 1954 and 1965;

At least 29 bombings in Birmingham, Alabama, between 1957 and 1965, and, I might add, not one conviction;

Eighteen bomb blasts at Negro churches and homes in McComb, Mississippi, during 1964 alone;

Dozens of persons, Negro and white, beaten and flogged;

Negro homes and churches burned with such frequency no accurate count was even possible;

Thousands and thousands of crosses burned in recent years, as the Klan terror campaign mounted into race warfare against the United States of America itself.

We believe that new Federal legislation is urgently needed because in some parts of our country, as hearings before your committee have disclosed, existing State criminal laws cannot be enforced properly, effectively, and fully to insure justice and the proper punishment of Klansmen. Every State in the Union already has adequate laws for dealing with most Klan violence. Mississippi has laws against murder, but the killers of Andrew Goodman, James Chaney, and Michael Schwerner in the now notorious "Triple Murder" received no punishment at the hands of the State. Georgia has laws against murder, but the shotgun slayers of Lemuel Penn received no punishment at the hands of the State. Alabama has laws against murder, but the killers of Mrs. Viola Liuzzo received no punishment at the hands of the State of Alabama.

Existing State laws against murder and violence are, in effect, nullified when the State law enforcement machinery fails to function. Such nullification can take place when law enforcement officials collaborate with the Klans, as was the case in the "Triple Murder." It can take place when members of grand and petit juries—and possibly even the courts—fail to carry out their oaths of office and allow the true administration of justice to become a travesty in cases where Klansmen and like-minded terrorists are the defendants.

The result of these nullifications of existing law and the breakdown of the law enforcement machinery is that, in the very States where effective law enforcement against murder, assault, arson, and violent

intimidation is most urgently needed to secure the life and property of those who work for, and seek the implementation of, the civil rights guaranteed to all persons by the Federal Constitution, "often nothing more than a fuzzy, fragile bit of Reconstruction legislation stands between segregationist killers and total freedom." (See *TIME* magazine, April 8, 1966, p. 28.)

Today's need for strengthened Federal criminal laws stems from the failures of local law enforcement agencies and widespread denial of federally protected rights. There is no doubt that racial crimes by Klansmen and like-minded terrorists, such as those mentioned, aim at denying federally guaranteed rights to members of the Negro minority and to white citizens as well.

At present, the main Federal laws against such crimes are contained in sections 241 and 242 of Title 18 of the United States Code—the Federal Criminal Code. Section 241 bars criminal conspiracies by any persons to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because he has exercised such rights and privileges. The role of the post-Civil War Klan in the genesis of this section is clear. One part of the section, for instance, provides that if two or more persons go in disguise on the highway, or on the premises of another, with intent to hinder or prevent his free exercise or enjoyment of any right or privilege secured by the Constitution or laws of the United States, they are in violation of the law.

Section 242 is directed against anyone who, under color of law, statute, ordinance, regulation, or custom willfully subjects any inhabitant of any State to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.

Both of these statutes adopted after the Civil War, sought—as the U.S. Supreme Court has recently noted—to cope with a wave of murders and assaults launched in 1868 by the Ku Klux Klan and the Knights of the White Camellia in an effort to keep Negroes from the polls. The Congress adopted these laws because the States themselves were helpless, despite the resort by certain States to extreme measures, some of which even made it legal to hunt down and shoot any disguised man.

One of two recent Supreme Court decisions—*United States* v. *Guest*—is important because in it six Justices of the Court expressed the view that Congress may enact legislation to deal with purely private violations of 14th amendment rights. It found this authority in section 5 of the 14th amendment which provides that Congress may adopt such laws as it believes proper to implement the purposes of the amendment itself.

In *United States* v. *Price*, as well as in the Guest case, there is reference to a most important limitation which the Supreme Court earlier had read into section 242. That limitation is the requirement that in prosecutions under section 242, the Government must prove a "specific intent" on the part of a defendant to deprive his victim of a right guaranteed under the 14th amendment. As a result, under this section it is not sufficient to support a conviction if a police officer is shown to have beaten a victim to death; it must be proved that when he did so,

he intended to deny the victim a federally guaranteed right, such as the right to a fair trial.

A paragraph of the indictment in *United States* v. *Guest*, portions of which the Court upheld, sums up the evils perpetrated by Klansmen which have led this committee to examine the need for additional legislation to deal with the whole problem. Paragraph 5 of the indictment, quoted in a footnote to the Court's decision in the Guest case, reads as follows:

It was part of the plan and purpose of the conspiracy that its objects be achieved by various means, including the following:

1. By shooting Negroes;
2. By beating Negroes;
3. By killing Negroes;
4. By damaging and destroying property of Negroes;
5. By pursuing Negroes in automobiles and threatening them with guns;
6. By making telephone calls to Negroes to threaten their lives, property, and persons, and by making such threats in person;
7. By going in disguise on the highway and premises of other persons;
8. By causing the arrest of Negroes by means of false reports that such Negroes had committed criminal acts; and
9. By burning crosses at night in public view.

The first seven items reflect an arrogant disregard of existing State laws against murder, assault, intimidation, and coercion. While in both the Price and the Guest cases, the Supreme Court of the United States has helped preserve some of the limited effectiveness of sections 241 and 242, the general history of efforts to use these sections of the Criminal Code to stop excesses against both Negro and white Americans is not encouraging.

Moreover, the very need to invoke sections 241 and 242, with their lesser penalties, to bring some measure of retribution on those charged with murder, as in the cases of Goodman, Chaney, and Schwerner, Lemuel Penn, and Mrs. Viola Liuzzo, remains a blot on our country's record and a sad commentary on law enforcement in the States concerned.

The need to strengthen and expand Federal protection of the basic rights of life, liberty, and property of all citizens has become an urgent necessity as this committee's hearings have amply demonstrated.

What is at stake in the States where the Klans and like-minded terrorists are active, is law and order itself. If the race warfare being waged by the Klans is not checked, this campaign of violence and intimidation could—and may already—pose a direct threat to the republican form of government in a number of States.

As the Attorney General testified yesterday, legislation designed to deal with planned lawlessness and violence has already been introduced in Congress by the administration, H.R. 14765. The Attorney General stated that, in drafting Title V of the bill, the Justice Department was conscious of the work and findings of the committee on the Klan. Other features of the bill would also help to curb lawlessness and terrorism by assuring that juries will be selected fairly and without discrimination.

We believe these provisions will help safeguard the true administration of justice in States where it has been negated by what has been called by *TIME* magazine the "intransigence of many Southern juries."

We would also commend to your consideration possible Federal anti-mask legislation; Federal anti-cross-burning legislation; and legislation to outlaw, as a Federal offense, the use of motorcades which contain private persons wearing uniforms or displaying insignias intended to intimidate, or having the effect of intimidating, citizens or preventing them from enjoying or exercising rights secured to them by the Constitution and laws of the United States.

A number of States already have anti-mask and anti-cross-burning laws. It may well be that the source for some of these laws was an educational pamphlet, containing model legislation, published by the Anti-Defamation League in the late 1940's. Anti-mask legislation bars the wearing of masks in public, and the anti-cross-burning statutes outlaw terroristic cross-burning. We favor Federal anti-mask, anti-cross-burning, and anti-motorcade laws which would prevent mask-wearing and cross-burning hoodlums from interfering with the peaceful use of the channels of interstate commerce by citizens in the enjoyment of their civil rights.

As the chairman of this committee and Congressman Weltner know, still another approach to the problem is embodied in H.R. 15678 and H.R. 15689. These bills which are identical would amend the Internal Security Act of 1950 for purposes of curbing the activity of terrorist organizations such as the Klans. They point to the dangers to the life, liberty, and property of citizens and to the constitutional processes arising from the activities of certain clandestine organizations. There is no need to summarize these bills for this committee.

We want to commend the sponsors of this legislation for their concern with the problem and the commitment their proposals show to coping with the problem. Certainly the evils created by the Klans and their activities are serious evils which demand specific remedies. We recommend that these proposals be given careful study.

We have some question that the reach of the bill in its definition of "clandestine organization" may be too broad and bring within its coverage organizations not so intended. I understand that yesterday in a colloquy between the chairman of the committee and the Attorney General it was made plain that it is only those organizations operating clandestinely and engaged in terrorist activities with the purpose of intimidating and threatening U.S. citizens which the authors of the bill intend to reach.

The chairman made it clear that he intended this bill not to apply to groups such as college fraternities and others which may operate secretly but do not engage in terrorist activities. This legislative history will help to insure the administration of the bill in a way which would be directed only to the evil it was designed to meet, namely, Klan terrorism. It will be helpful, however, if the committee in its further consideration of the legislation can narrow the definition to reflect more precisely its purpose. There are also provisions which may well involve problems of constitutionality.

We have made the foregoing comments on these proposals not in any spirit of criticism, but in order to demonstrate that in our view these proposals call for more careful study in order to iron out the kind of problems we have described. We commend the intent and clear goal of these proposals. We call for further examination and study of them to see if they can be so amended as to achieve the desired goal of eliminating the Klan as a force for unlawful violence and ter-

rorism without undermining constitutional guarantees and adversely affecting innocent organizations.

We approve the recent allocation of Federal funds to finance police training courses. These courses should help to raise the professional levels and professional standards of local police forces throughout the country. They must also seek to make each local police officer aware of the fact that he is the first line of defense in upholding our laws, with a sworn duty to apprehend law violators, and should also impress upon him his equally important duty of insuring the fullest possible protection of constitutional rights of all citizens.

These training courses must impress upon police officers their bounden duty to give "equal treatment under the law," regardless of race, creed, national or ethnic origin. Policemen must, in our view, be supremely aware at all times of their duty to protect the fundamental human rights and freedoms, which are the cornerstone of our American form of government, and the human dignity and mutual respect among all men, which is the touchstone of American democratic principles.

In closing, we would respectfully suggest that in any report your committee may issue on its investigation of the Klan problem, it might well recommend to the legislatures of the several States that any of them which have not yet adopted anti-mask and anti-cross-burning laws consider the wisdom of doing so at this time.

The report might also suggest that State legislatures consider anti-motorcade legislation of the type we have suggested for possible Federal action. The committee's report might also underscore the irony of adopting State criminal laws against secret, racist, and terroristic organizations like the Ku Klux Klan, while at the same time according to the Klan groups the benefits of charters issued under State incorporation laws. In plain point of fact, the State legislatures might be reminded that what is required is not State aid through the benefits of charters and incorporation, but State action to make sure that the Klan hoodlum organizations, which threaten the foundations of law and order and domestic tranquility, are barred from enjoying any form of State sanction, whether they seek to incorporate openly as the Klan or to mask themselves as rifle clubs, sporting clubs, welfare associations, or even political organizations.

This committee is, of course, well aware of the seriousness of the threat posed by the hooded hoodlums of the Klans' Invisible Empire. We again thank the committee for the opportunity given us by its invitation to express our views on ways of dealing with this danger to the Republic.

Mr. Chairman, if I may at this point I should like to introduce Mr. Justin J. Finger, who is director of fact finding of the Anti-Defamation League. Mr. Finger has some additional data which he would like to present to the committee. Mr. Finger.

Mr. WELTNER. Mr. Chairman, once again, if I might.

Mr. Finger is a former resident of the former Fifth District of Georgia, which was reapportioned some 2 or 3 years ago. I am glad to see him again, he looks extremely healthy, and I want to welcome him personally to the committee.

Mr. FINGER. Thank you, Congressman.

There is little I can add to the testimony of my two colleagues here this morning. However, I would like to say that according to our

findings Klan violence and intimidation in the South have continued up to the present date. For example, from January 1, 1966, through June 30, we recorded at least 53 incidents in Southern States of violence and intimidation. I think it would be of interest to the committee that after the committee began its probe of the Ku Klux Klan we noted a sharp decrease and decline in Klan activity and also a decrease in Klan membership throughout the Southern States.

In fact, we know that Klan leaders such as Imperial Wizard Shelton of the United Klans ordered their men to stay under cover and not participate in public activities.

However, since February of this year, the Klan fever chart, so to speak, has started to go up again and although it has not reached the previous mark, it is moving upwards. For example, specifically on June 19 of this year in Hickory, North Carolina, 2,000 people attended a Klan rally in the area of Highway 51. Now what is of interest is that this was the first Klan rally held in Catawba County, North Carolina, in 100 years. From our information, all the applications and literature that were available were distributed and those in attendance at the meeting clamored for applications that were not at hand.

Mr. WELTNER. Mr. Chairman, if I might interrupt, was that after the breakdown of the Klan investigation by a former Attorney General Malcolm Sewell in North Carolina?

Mr. FINGER. Yes, it was June 19.

Mr. WELTNER. That is subsequent to the time that it became clear from the announcement of the Governor that there was going to be no investigation; is that correct?

Mr. FINGER. Correct.

Mr. WELTNER. Mr. Finger, do you consider it apparent that abandonment of that probe by the State administration was in any way responsible for the rally in Catawba County and the size of the attendance and the enthusiasm there shown?

Mr. FINGER. I would say it was a contributing factor, anyway. I don't know if it is the sole cause.

Mr. WELTNER. The heat was on in North Carolina, the Klan laid low.

Mr. FINGER. Correct.

Mr. WELTNER. But as soon as the heat was off it popped up again.

Mr. FINGER. Correct.

Mr. WELTNER. In increased numbers?

Mr. FINGER. Yes.

Mr. WELTNER. All right.

Mr. FINGER. I think there is one other factor: We have found where the Ku Klux Klan has efficient organizers, it is quite strong. The prime example has been the State of North Carolina because, gentlemen, you know until about 4 or 5 years ago there really was not a Ku Klux Klan in North Carolina, and today we find the State with the largest Klan organization.

Another example is the State of Virginia. They have sent in some experienced organizers, and that is the one State over the past number of months where we have actually found an increase in Klan strength.

Mr. WELTNER. To point out the point on that subject the Klan had no organizer until Kornegay was detailed Grand Dragon of the realm and was sent in there some time prior to the investigation by this committee.

Mr. FINGER. Right.

Mr. WELTNER. Consequently, any Virginia activity, I suppose, stems from Mr. Kornegay's movement into that State.

Mr. FINGER. That is correct, Congressman.

I would like to conclude by giving you some of the figures we have on current Klan membership, with the understanding that this is a clandestine organization and it is not always possible to get totally accurate figures.

Using October of 1965, we estimated that there were approximately 50,000 Klansmen. Of course, that included hardcore Klansmen and those who were on the rolls and possibly inactive.

In February of 1966, the Klan had reached for recent years a low-water mark of 20,000, but now we find that the figure has come up to approximately 29,500. It would interest this committee to know that one of the major campaigns for the Klan this coming summer is a drive for defense funds for those Klan leaders whom this committee has cited for contempt; in other words, they are going to use that as an excuse to collect more money.

I might add that in the Hickory rally a substantial sum of money was collected by the Klan.

Mr. KALER. Mr. Chairman, might I make a statement in respect to the question that was propounded by our Congressman, Mr. Weltner.

Congressman, as you know, in Georgia in 1946 we terminated the charter of the Klan, and the material given to us by Judge Duke shows that there was a fragmentation of the activities of the Klan following the cancellation of their charter. The point that he makes, and I would like to say that it seems a realistic one, is that wherever there is governmental inspection of this problem, the problem itself abates. Tragically, wherever those efforts are aborted or are not successful, it might be said that that is incorrectly interpreted by the Klan as giving encouragement to their efforts and their activities.

Mr. WELTNER. The figures that Mr. Finger cites are very interesting.

Now to recap what you say, in October, which was the date upon which this committee began its public hearings, you estimate that the membership of the Ku Klu Klan organizations was 50,000.

Mr. FINGER. Correct, Congressman.

Mr. WELTNER. And in February, which was the month in which the hearings suspended, that had declined to 20,000. That is a 60 percent diminution in Klan membership.

From February, the last of the open hearings of this committee, to the present time, the Klan has increased from its low point by almost 50 percent, still substantially lower than it was prior to the beginning of these hearings.

Mr. FINGER. That is correct, Congressman.

Mr. POOL. May I ask a question, Mr. Chairman?

The CHAIRMAN. Mr. Pool.

Mr. POOL. These riots in the cities of the North—Chicago, Cleveland, and Los Angeles—do they have any effect on the total membership of the Ku Klux Klan?

Mr. FINGER. I would say that any kind of crisis activity has an effect. For example, I can't tell you exact figures, but I recall the racial crisis about 4 years ago in Albany, Georgia. Now that area

had no Klan activity at all, yet a Klan rally held during the crisis drew some five or six thousand people. Now I noted in the paper the other day that Roy Frankhouser, I think he might have appeared before this committee, the Grand Dragon of the State of Pennsylvania, a former member of the American Nazi Party, said that because of racial crisis that everybody should arm themselves and get their guns and ammunition.

Mr. POOL. So, in effect, these riots in these cities are hurting the cause of civil rights and also increasing the Klan membership?

Mr. FINGER. I don't know whether they are hurting the cause of civil rights, but I would say that the Klan and organizations like it would attempt to exploit these situations.

Mr. NEWFIELD. Mr. Chairman, that completes our testimony.

The CHAIRMAN. Thank you very much. We not only appreciate the material you supplied and the testimony you gave, you and your associates, but we certainly will consider the recommendations you made.

Now I would like to say this: I would like to get your views on a clause establishing an additional criterion for possible inclusion in the definition of clandestine organizations. This clause would narrow the scope of the definition as contained in our bill in possibly a desirable way.

I hand it to you and I will read it and I will ask you to comment on it.

After the provisions in the bill describing the clandestine organization, separated by the world "or" in each instance there would follow this additional clause in section 403, at the end of paragraph 4, and I quote. This would be the new language:

"And whose history, purpose, policies, or activities embrace the use of violence, threats, intimidation, or harassment in accomplishing any of its objectives."

We considered such a criterion very carefully and finally rejected it because it appeared to introduce problems of proof which we thought would handicap possible prosecutions. It would mean not only a new element to be proved, but it would also flag a prospective witness from among the membership of the organization that he might incriminate himself by coming forward as a volunteer or by testifying under the subpena process.

Personally, I think this additional clause preceded by the word "and" would certainly make it clear beyond any shadow of a doubt that organizations—bona fide fraternal, religious, or other such groups—could not possibly be embraced within the definition.

I personally am inclined to believe that this kind of language would be helpful and I take it that the Attorney General seemed to have that in mind when he testified yesterday.

How do you feel about it?

Mr. NEWFIELD. Mr. Chairman, our reaction offhand would be that if the bill were amended to include this new section (e), it would go a long ways toward meeting that objection and would probably be most helpful in that regard.

The CHAIRMAN. Thank you very much.

Mr. BUCHANAN. Mr. Chairman, Mr. Newfield is one of my constituents. It is my privilege to represent the city of Birmingham, and I

want to express my appreciation for his testimony and for the contribution you gentlemen have made to these hearings.

Mr. Chairman, I do feel constrained to say, because the defections of certain law enforcement officers had been mentioned and unsolved Birmingham bombings also specifically mentioned, that we are very fortunate in our city of Birmingham and county of Jefferson in Alabama to have some very dedicated and capable law enforcement officials.

Sheriff Bailey, for example, is a man of high courage and of great competence and is a law man who, by no stretch of the imagination, could be described as a friend of the Ku Klux Klan. We also have a very fine professional police chief, Jamie Moore. The last bombings in 1964 were bombs planted, among other places, at the homes of city officials, the mayor and other officials. Therefore we cannot assume an inefficient local government. They are very hard crimes to solve, and I am sure you understand.

I thought I ought to point out, Mr. Chairman, that the crime rate in the city of Birmingham is declining at a time when it is increasing in most cities. We are blessed in our own district, Mr. Newfield, with very fine law enforcement officers, and I think they certainly deserve our commendation and gratitude in spite of the difficulty of solving certain types of crime.

I would like to say further along this same line, gentlemen, that throughout these hearings I have sought to impress on the committee and the public the fact that the overwhelming majority of southerners are not represented by the Ku Klux Klan.

Now you have mentioned the difference between State and Federal court results. May I point out that the Federal court in Alabama which convicted men in the Liuzzo case was an Alabama court presided over by a judge who was a citizen of Alabama and the jury was composed also of citizens of Alabama. I certainly would join with you and appreciate your pointing up the fact, with which I agreed, of the need for State legislation which we had in the 1940's, an anti-mask law passed in Alabama, which may have been imperfectly enforced and circumvented in certain ways, but we do need State action in this area, and I appreciate your pointing up that fact.

We need more aggressive enforcement at the local level and State level in many places. I appreciate your including this in your testimony.

Mr. Chairman, I just want to reiterate once more that the overwhelming majority of the southern people are not in the least represented by this criminal minority which has been responsible for the acts of violence and terrorism in the deep South.

Mr. NEWFIELD. Mr. Chairman, may I say that I would endorse wholly the statements made by Congressman Buchanan. I know both of these police officers and I have a very high regard for them as law enforcement officials. I think it is also noteworthy to say that the Birmingham Police Department has recently added Negroes to its police force. Of course, this is something that should have occurred 20 years ago or longer, but we are making progress in Birmingham and in Alabama.

I think that, while at times it may appear to be painfully slow, certainly the vast majority of the citizens of Alabama, and of Birming-

ham in particular, do not belong to an organization such as the Ku Klux Klan. This is a fringe, lunatic, hoodlum, lawless element which by no means is at all representative of the fine citizens of our State.

Mr. BUCHANAN. Thank you for that clarification. We appreciate your testimony.

The CHAIRMAN. Thank you very much.

Mr. KALER. Mr. Chairman, one of the points I made was discussing this legislation with the members of our district. I found that everybody was united in the purpose to which this legislation was addressed and I am certain that the chairman and the members of this committee will recognize that our own police chief and indeed the mayor of our city have established a laudable example for all such public officials to follow in their comprehension of this problem and being in the forefront of the very fight which you are carrying on to destroy this menace.

The CHAIRMAN. Thank you very much.

Mr. BUCHANAN. Mr. Chairman, I have one more point, if you please, sir. The State of Alabama, for the record, enacted in 1927 legislation which makes it a felony to mask, whip, flog, or assault any person. An act of 1949, and I may say that my father happened to be one of the leading citizens in the citizens committee to bring about the passage of this act in 1949 makes it a misdemeanor punishable by fine and imprisonment for any person over 16 years of age to appear on any public road while wearing a mask or appear at the house of another or while masked to trespass upon private property in any meeting or demonstration. This is a reflection of the will of the people of Alabama.

The CHAIRMAN. Thank you very much.

Mr. NEWFIELD. Thank you very much, Mr. Chairman.

The CHAIRMAN. We have with us Mr. Clarence Mitchell, a representative of the NAACP.

Mr. Mitchell, we are delighted to have you with us and we look forward to your presentation, sir.

Mr. MITCHELL. Thank you.

STATEMENT OF CLARENCE MITCHELL, DIRECTOR, WASHINGTON BUREAU OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Mr. MITCHELL. Mr. Chairman and Members of the Committee: My statement is very brief and it incorporates by reference a letter which I think is very pertinent. If it is agreeable with you, Mr. Chairman, I will follow the text of my statement and at an appropriate place refer to four pertinent paragraphs of the attached letter.

The CHAIRMAN. All right. Proceed in your own way.

Mr. MITCHELL. Mr. Chairman and Members of the Committee: I am Clarence Mitchell, director of the Washington Bureau of the National Association for the Advancement of Colored People. Because our organization has just recently ended its national convention in Los Angeles, California, there has not been an opportunity for our general counsel, Mr. Robert L. Carter, to study H.R. 15678. However, he has sent me a letter which is pertinent to this testimony. (For full text of letter, see pp. 1459, 1460.)

At the outset, I would like to commend Chairman Willis for the fearless manner in which he has attempted to place the grisly record of the Ku Klux Klan before the Congress and before the Nation. It is also noteworthy that Representative Charles Weltner was one of the first Members of Congress to seek an inquiry into the activities of those who compose the so-called Invisible Empire.

At this point, Mr. Chairman, I would like to refer to a pertinent paragraph in Mr. Carter's letter which is attached. The paragraph reads—

my assumption is that the legislation would require all members of the Klan and other such groups to register with the federal government and/or seek to make the activities of such clandestine groups subject to such heavy penalties as to discourage membership therein.

This to me is the important sentence to register our position as an organization:

The reach of the statute in either or both cases is well within the limits of permissible constitutional authority.

The next paragraph that I would like to refer to is one that Mr. Carter points up from a decision involving our organization which distinguishes between Klan-type activity and the activity of other groups:

Mr. Justice Douglas in *Louisiana ex rel Gremillion* v. *NAACP*, supra, at page 297 has put the matter succinctly. There he said: "At one extreme is criminal conduct which cannot have shelter in the First Amendment. At the other extreme, are regulatory measures which, no matter how sophisticated, cannot be employed in purpose or in effect to stifle, penalize, or curb the exercise of First Amendment rights."

The final paragraph in his letter is:

We believe in the right of free expression and association, but as applied to Klan activities an attempt is made to use those constitutional guarantees to cloak lawlessness and crime. If the Klan would come out in the open, abjure its secret oaths, its pledge to violence and confine itself to anti Negro or anti civil rights activities within the law, no one could rightfully object. What makes the Klan a menace is not so much the ideas it espouses, but the lawless acts it engages in. These must be stopped, and against these acts, Negroes and civil rights workers are entitled to federal protection.

I would just like to say, Mr. Chairman, that I am in the happy position of being the father of a son who is a member of the Maryland Legislature who got through an anti-cross-burning statute in the Maryland Legislature in the last session. It might be interesting to note that the genesis——

The CHAIRMAN. He is a worthy son of a noble sire.

Mr. MITCHELL. Thank you, Mr. Chairman.

The genesis was he called a meeting for the purpose of encouraging people to register and vote. He noticed a suspicious looking car driving around the place and made a note of the license tag. He went in and made his speech and came out and found a cross burning outside. He went to the police because there had been a rash of cross-burnings, and the police just by coincidence happened to have the car on a traffic violation which he had noticed outside the building. However, they said that there was no statute in the State which made the burning of a cross on somebody else's property an offense, and he did introduce such a statute and it did become the law.

I have been a little disappointed at the way it has been enforced.

I have noticed in the adjacent county here of Washington, Prince Georges County, that some of the officials didn't even seem to know that there was such a law, and there have been cross-burnings which apparently have been staged without a whole lot of concern on the part of law enforcement officers as to what might be done about them. I called the fire department once myself and I was told that yes, it was a 40-foot cross burning but they had made arrangements to have a bucket of water nearby to put out this cross. At the next cross-burning they arranged to have a little larger container, but as I understood the situation this fire was spreading all around and menacing other people's property.

Well, I just would like to say, in passing, no matter how many laws we pass if the local officials are going to remain indifferent to them it won't do a whole lot of good. I would hope very much that when and if a statute along these lines is passed it will be adequately enforced.

Now Mr. J. Francis Pohlhaus, counsel for the Washington Bureau, has given careful consideration to H.R. 15678. He has pointed out the following hazards in the bill as it is written, and I agree with his conclusions:

1.) Section 403(4) defines a clandestine organization as one that conceals its membership or the membership of any branch by "any deceptive practice or other means." This could cover law-abiding organizations that withhold membership lists solely for the purpose of protecting individual members against various kinds of reprisals or harassment and even death.

2.) Under Section 406 it is possible that members of a labor union which refuses to disclose its membership lists during an organizing drive, and therefore becomes a clandestine organization under 403(4), could be prosecuted for tying up traffic in front of or preventing delivery of an interstate shipment to a plant or establishment involved in a labor dispute.

I might say, Mr. Chairman, that in the *Bryant* versus *Zimmerman* case, which is the case that the Court referred to again in one of their recent decisions involving our organization, the Supreme Court noted that the New York statute which made it unlawful to be a member of a Klan contained specific exemptions for certain groups. These were fraternal organizations and labor organizations.

The CHAIRMAN. Let me say that we considered that very statute very carefully, and the definition of clandestine organizations contained in section 403 was gone over with a fine legal tooth comb, so to speak, and we decided to have the language as it appears in the bill.

Now, I want to ask you the same question I propounded to the previous witness. It is true—though extremely farfetched in my opinion—that some might conclude that a bona fide organization could possibly, conceivably, fall under one of the disjunctive definitions of clandestine organization in this bill, although I can't conceive of a Federal attorney worth his salt who would prosecute any bona fide organization of the type we both have in mind.

Yet I ask you how you would feel about, after the definition in section 403(4), adding a clause which, in addition to all the other criteria of a clandestine organization, would say that in addition to any one of those, it would have to be one "whose history, purpose, policies, or activities embrace the use of violence, threats, intimidation, or harassment in accomplishing any of its objectives."

Now I don't see how any one worthy of the name of lawyer, and I am serious about that, if this added language is included, could come to a conclusion that a Masonic order, a fraternal order, the Knights

of Columbus, or any good American body, a fine, civic organization or movement, could by any stretch of the imagination be included because, in addition to all other elements, it would embrace only those organizations whose history, purpose, policies, or objectives embrace the use of violence, threats, intimidation, or harassment in accomplishing their objectives.

I took the liberty of saying that I got the impression from his testimony that the distinguished Attorney General of the United States would applaud this addition. Mr. Newfield, the previous witness, thought the same. What do you think would help the trouble that our Attorney General suggested, the troublesome point he has in mind? Don't you think this would be helpful?

Mr. MITCHELL. Well, I listened to the statement very carefully when you read it the first time, Mr. Chairman, and I believe it is clear, or certainly intended to be clear, that it is conjunctive with the rest of the definition, but the word that worries me in it is "harassment."

The CHAIRMAN. Yes, but that is just one, "harassment."

Mr. MITCHELL. But there again you see it is disjunctive.

The CHAIRMAN. What organization could possibly be accused of coming under it by the word "harassment"?

Mr. MITCHELL. None by a fairminded and reasonable attorney.

The CHAIRMAN. Name one.

Mr. MITCHELL. I said none.

The CHAIRMAN. By a farfetched exaggeration of the statute, could you name one?

Mr. MITCHELL. Well, I——

The CHAIRMAN. The civil rights movement?

Mr. MITCHELL. I was about to name one which does not necessarily come under this definition, but which got into difficulty because of a somewhat similar statute improperly interpreted. What I was about to say is, that in the great State of Louisiana, which has a lot of fine and distinguished lawyers, their attorney general in his execution of duty did undertake to institute an action against our organization under your Ku Klux Klan statute. Happily, we prevailed ultimately, but there was, I believe, a reasonable lawyer and a good one who apparently thought, on reading the language of the statute, that we were covered.

I think it is awfully important to be sure that even if you are dealing with an unreasonable lawyer he is not going to be able to distort the meaning of the English language.

The CHAIRMAN. I am convinced that you would agree, however, that the NAACP, if that is the organization you have in mind, would certainly be excluded if this clause is added to the definition, because certainly I know of no one in the United States who would say that the NAACP is an organization whose purpose, policies, or activities embrace the use of violence, threats, intimidation, or harassment in accomplishing any of its objectives.

Mr. MITCHELL. Well, that is absolutely correct; we do not.

The CHAIRMAN. You pick on the word "harassment," but there again I can't conceive that even though that word is disjunctive in this clause—"whose history, purpose, policies, or activities embrace the use of violence, threats, intimidation, or harassment"—I don't see how any court could pick one word out of all of these to lug in an organization of the type we are now talking about.

Mr. MITCHELL. I really appreciate your saying that, Mr. Chairman.

The CHAIRMAN. You think this would be helpful?

Mr. MITCHELL. I would feel confident if you were the judge. With your great reputation for fairness and proper treatment, you would certainly read that word in its proper context. Unhappily there are not as many——

Mr. WELTNER. Mr. Chairman, the word "harassment" is not, as the other words in that sentence, limited to violence and the use of violence. I think that is probably what is troubling the witness.

I think we probably put it in there in that proposed amendment as a synonym.

The CHAIRMAN. That is what I mean.

Mr. WELTNER. So it is not of necessity a synonym for intimidation, and I am sure that fact will be well considered.

The CHAIRMAN. Let me say right now that I have in mind, in using the word "harassment," the type of harassment that comes closer to intimidation, violence, and threats than to the technically possible connotation of harassment in its broader sense. I was trying to search for that thought a while ago. I have in mind that the use of the word "harassment" in this limiting clause is of the type that would be a synonym to violence, threats, or intimidation. That is the type I have in mind, and we want to put that in the report.

I think that will remove all of your fear.

Mr. MITCHELL. May I respectfully ask the chairman for an opportunity to submit speedily a brief memorandum on this language?

The CHAIRMAN. Surely. You are welcome.

Mr. BUCHANAN. Mr. Chairman, if the word "harassment" were not involved, the other verbiage minus the word "harassment," would this solve the difficulty?

Mr. MITCHELL. I know the meaning of the English language, Mr. Buchanan, and I think the rest of it certainly could not by any stretch of the imagination, cover the civil rights organizations with which we are associated, and therefore I would not think in an offhand way that it would be as troublesome a matter. I think it would be remedial. As a lawyer, I am sure you know that it is always good to reflect a little on language and come up with a mature opinion when you have got so much at stake, and that is the reason I asked the chairman for an opportunity to submit a brief memorandum.

The CHAIRMAN. May I say this: This is a legal problem now. We wrestled with this deeply and now it occurs to me that I asked the Attorney General, the chief law enforcement officer of our country, questions along this line. And he agreed that section 403 must be read in context with section 402 defining a clandestine organization which draws a distinction between secret and illicit and illegal activities, and so on, and he came to the conclusion that, when both these sections are read together, I take it that he would not fear that, even under the bill as it is presently drafted, there would be any possibility of there coming into being the fears of your distinguished attorney. I am satisfied that, with the added language that I now suggest which the committee will consider, the matter would be wholly and completely clarified. That would be the intent of the committee, and what I am saying there I intend to follow in the legislative history.

Mr. MITCHELL. Thank you, Mr. Chairman.

Mr. Pohlhaus made two other points. Number 3 is:

3.) The use of the words "any unlawful means" in Section 407 conceivably could cover situations in which persons are asserting a lawful federal right, but acting in a manner that violates some unconstitutional state law or local ordinance.

Now that could easily happen in an area, let us say, where unfortunately we still have a park or place that is off limits for Negroes. A Negro asserts his constitutional right to go in that park since it is publicly owned, he is arrested, he refuses to leave. Now the question is, whether that kind of an action asserting a constitutional right would be covered by this unlawful means.

Mr. WELTNER. Dr. Mitchell, in the event of a conflict between Federal law and State law, the law is quite clear that Federal statute prevails; isn't that correct?

Mr. MITCHELL. As a lawyer I am aware of that.

Mr. WELTNER. Inasmuch as this would be a Federal statute, any prosecution under which it was being initiated by the United States district attorney and the United States court, would not that doctrine of Federal sovereignty solve that problem?

Mr. MITCHELL. I think it would be reasonable to expect that it would but——

The CHAIRMAN. I call your attention to the passage in this bill speaking about rights protected or secured by the Constitution and laws of the United States. That, plus the doctrine that my distinguished colleague refers to, would help in solving the problem you have just raised.

Mr. MITCHELL. Well, I would certainly hope so, but this is the mature opinion of a constitutional lawyer.

The CHAIRMAN. I understand.

Mr. MITCHELL. I think that it would be well if we could be sure that there is some reflection on this point and appropriate language.

The CHAIRMAN. Will you let your memorandum cover that point too?

Mr. MITCHELL. Yes.

The CHAIRMAN. All right.

Mr. MITCHELL. Mr. Pohlhaus' fourth point is:

4.) Other examples of broad language which might be used to prosecute organizations not intended to be covered by the bill are "or other means" in Section 403(4); "any purpose, objective, or plan of such organization" (whether lawful or not) in Section 406; "or any unlawful means" in Section 407(a).

Now these are things which we have registered a view on and, with the foregoing in mind, we cannot urge passage of H.R. 15678 and companion bills in their present form. However, in view of the urgent need for laws to curb criminal activity of the Ku Klux Klan, we suggest that consideration be given to strengthening Title V of the 1966 civil rights bill in a manner that will permit the Federal Government to act swiftly and forcefully against Klan violence and intimidation. If this is not practicable, we urge that there be revision and general tightening up of H.R. 15678 and companion bills to make certain that the highly desirable effort to control the criminal conspiracies of the Ku Klux Klan does not also become a means of ensnaring those who may be engaged in controversial but not criminal or unconstitutional activities.

The CHAIRMAN. The letter will be included at this point in the record.

(Mr. Carter's letter to Mr. Mitchell follows:)

JULY 18, 1966.

DEAR CLARENCE: I have not had the opportunity to study the provisions of the proposed federal legislation, designed to curb the activities of the Klan and similar secret oath bound organizations dedicated to violence, intimidation and terror. However, my assumption is that the legislation would require all members of the Klan and other such groups to register with the federal government and/or seek to make the activities of such clandestine groups subject to such heavy penalties as to discourage membership therein. The reach of the statute in either or both cases is well within the limits of permissible constitutional authority.

The required disclosure of Klan membership was upheld by the United States Supreme Court in *Bryant v. Zimmerman*, 278 U.S. 63. At issue was the validity of a New York statute to this effect. The validity of a similar Louisiana law was not questioned as applied to Klan membership in *Louisiana ex rel Gremillion v. NAACP*, 366 U.S. 293, but its attempted application to NAACP members was said to have violated rights of freedom of association.

In *NAACP v. Alabama*, 359 U.S. 449 the Supreme Court distinguished between governmental action directed at membership in organizations engaged in lawful activities, which might run afoul of constitutional proscriptions, and membership in organizations engaged in unlawful acts, which would not. What was emphasized were the secret oath bound nature of the Klan, the dedication of its members to unlawful intimidation and violence, and that the legislature had these factors before it in enacting the law. Many people, of course, want to classify civil rights groups and Klan groups in the same category, with the former seeking to further civil rights and the latter to preserve the status quo. Nothing could be further from the truth. The civil rights groups, where they are membership organizations, are open to the public; their meetings are public meetings; whatever they do, prepare or plan is open and there are no secret oaths or rituals, and there is no attempt to keep their membership secret, except where individual members request anonymity and where southern states shortly after *Brown* sought to secure NAACP membership lists for purposes of reprisals and intimidation. Finally, the civil rights groups seek to implement the law, to secure rights under the law, or to obtain equal citizenship status as mandated by the Constitution.

Mr. Justice Douglas in *Louisiana ex rel Gremillion v. NAACP*, supra, at page 297 has put the matter succinctly. There he said:

"At one extreme is criminal conduct which cannot have shelter in the First Amendment. At the other extreme, are regulatory measures which, no matter how sophisticated, cannot be employed in purpose or in effect to stifle, penalize, or curb the exercise of First Amendment rights."

The hearings before the House Un-American Activities Committee is a sufficient showing of the harm to warrant enactment of the statute. If the law attempts to reach clandestine groups (those that try to keep themselves secret, the identity of their members secret and require binding secret oaths or secret rituals) that too would not be inconsistent with freedom of association and expression held protected in *NAACP v. Alabama* and cognate cases. While government may not be able to require individual members to disclose their membership in law abiding groups, where a nexus has been established between unlawful conduct and organizational membership, disclosure can be required. Where a nexus has been established between clandestine groups and illegal acts, the government may make the acts of such clandestine groups punishable. We believe in the right of free expression and association, but as applied to Klan activities an attempt is made to use those constitutional guarantees to cloak lawlessness and crime. If the Klan would come out in the open, abjure its secret oaths, its pledge to violence and confine itself to anti Negro or anti civil rights activities within the law, no one could rightfully object. What makes the Klan a menace is not so much the ideas it espouses, but the lawless acts it engages in.

These must be stopped, and against these acts, Negroes and civil rights workers are entitled to federal protection.

Sincerely yours,

/s/ Bob
ROBERT L. CARTER, *General Counsel.*

Mr. Clarence Mitchell
Director, Washington Bureau NAACP
422 First Street, S.E.
Washington, D.C. 20003

Mr. POOL. Mr. Chairman, I would like to make this comment.

In your prepared statement, Mr. Mitchell, you have praised Chairman Willis and Mr. Weltner, and I agree with you 100 percent; they have done a tremendous job. At this point, though, I want to point out to you that the committee, by a unanimous vote, voted to have this investigation and the minority members of the committee have done a good job in cooperating and participating in the hearings. I myself was one of the first ones to ask for the investigation. I just wanted to get that in the record, that the whole committee has been for this.

Mr. MITCHELL. Well, it is indeed, Mr. Pool, and I feel very bad about not including the members of the committee who worked for this. I think one of the strengths of the investigation was that here was a committee of the Congress with a chairman from the southern part of the United States with southern members on it, which nevertheless undertook to come to grips with a serious problem which has great emphasis in the South, but which nevertheless is a menace to the entire country.

I certainly did not mean to fail to express my appreciation for all who have tried to pull the hood off the Ku Klux Klan and to stamp out the fiery crosses so the cross will be a symbol of decency, as it is supposed to be in a Nation that believes in God.

The CHAIRMAN. May I say that, in connection with my statement about acts of silly attempted harassment of myself, one morning at the wee hours, maybe at 3 o'clock in the morning—I am an early riser—I was up at 4 o'clock and I woke up to find out that there were at least a hundred great, big, oh, 3 by 3 flysheets with the fiery cross distributed all over my front yard and that was supposed to intimidate me.

"Big D," I told them; that is, big deal. "Now what am I supposed to do, tremble?"

Mr. MITCHELL. I might say, Mr. Chairman, it is one thing in Washington or New York to take a stand against these things, and I admire everybody who does, but when somebody like you, living in an area where they can reach you, takes a stand I think that is crystal-clear commendable courage. I have always felt from the very first day that I heard that you were having a problem that you could take care of the situation because you are a tough opponent—you are a fair opponent, but you are a tough opponent for anybody to have.

The CHAIRMAN. Well, I have four of them against me right now. I am doing the best I can to take care of all of them.

Thank you very much.

Mr. BUCHANAN. Mr. Chairman, off the record. I thank you for not praising me. [Laughter]

Mr. MITCHELL. Mr. Chairman, if you will indulge me one moment, in reply to Mr. Buchanan you may be interested to know that when former Senator Claude Pepper, who is now a member of the House,

was running once for the Senate, his opponent got a colored man to go around the State everywhere that Senator Pepper appeared to shake hands with him to have a picture of him doing it. So I do not include you in my commendation.

The CHAIRMAN. Thank you very much.

Now I would like to make a statement.

I have in my hand a flysheet announcing that there will be a press conference called at noon by the national committee to abolish this committee [National Committee To Abolish the House Un-American Activities Committee] and I have an idea that anything but nice things will be said about this committee at the conference. When an organization of this kind has such an open hostility against this committee, I think it might be reasonable to conclude that its judgment might be somewhat warped, so perhaps the press might consider the source of that press conference.

However, I want to read a part of the statement I made yesterday:

> These hearings are being held today to obtain the views of various witnesses concerning these bills, to listen to their criticisms of them, or to any recommendations they might have for strengthening or improving them.

Now I issued a press release a week ago, inviting just anyone who wanted to testify to come forward. I notice that in the audience right now there are two members of the group that called this press conference and I now formally invite them to testify if they want to stand the cross-examination.

If not, the committee will stand in recess until 2 o'clock this afternoon.

(Whereupon, at 12 o'clock noon Thursday, July 21, 1966, the subcommittee recessed, to reconvene at 2 p.m. the same day.)

AFTERNOON SESSION—THURSDAY, JULY 21, 1966

(The subcommittee reconvened at 2:30 p.m., Hon. Edwin E. Willis, chairman, presiding.)

(Subcommittee members present: Representatives Willis, Weltner, and Buchanan.)

The CHAIRMAN. The committee will come to order.

Our first witness for the afternoon is Mr. Joseph Rauh.

We are glad to have you, Mr. Rauh.

Mr. RAUH. Thank you, sir.

STATEMENT OF JOSEPH L. RAUH, JR., ON BEHALF OF AMERICANS FOR DEMOCRATIC ACTION; ACCOMPANIED BY DAVID COHEN, NATIONAL LEGISLATIVE DIRECTOR OF ADA

Mr. RAUH. Mr. Chairman and Members of the Committee: My name is Joseph L. Rauh, Jr. I serve as ADA national vice chairman for civil rights and civil liberties. On behalf of the officers and members of Americans for Democratic Action we appreciate the House Un-American Activities Committee allowing ADA time to testify.

I have with me Mr. David Cohen, who is the national legislative director of ADA.

ADA's requirement for membership specifically states that:

> Americans for Democratic Action is an organization of progressives dedicated to the achievement of freedom and economic security for all people everywhere

through education and democratic political action. We believe that rising living standards and lasting peace can be obtained by democratic planning, enlargement of fundamental liberties and international cooperation.

We believe that all forms of totalitarianism are incompatible with these objectives. In our crusade for an expanding democracy and against Communism, Fascism and reaction, we welcome as members of ADA only those whose devotion to the principles of political freedom is unqualified.

ADA has a 20-year record of devotion to and respect for the democratic process. We deplore racism. Our contempt for the Ku Klux Klan and all perpetrators of violence and bigotry needs no amplification.

But we believe that all public policies should conform to the requirements of the Constitution. We believe this standard holds true even for legislation designed to control the activities of those organizations that are arch enemies of democratic society such as the Ku Klux Klan and the Communist Party. The strength of our system is that we possess constitutional means to protect our democracy. This elementary concept is ignored by the Willis bill.

ADA vigorously opposes H.R. 15678 because the bill is unconstitutional, unworkable, and unwise. If enacted, it would fail to protect individuals against the Klan's activities of violence. Bluntly put, this legislation is a fraud on the American public: ostensbly Congress would have limited the illegal activities of the Klan; in fact this legislation does not.

The most effective means of dealing with the Ku Klux Klan is to enact a meaningful Civil Rights Act of 1966 that will overhaul the southern system of "justice" from stem to stern. H.R. 14765, approved by the House Judiciary Committee, is but a very small start in this direction. The civil rights bill should be strengthened to include a provision for civil indemnity for those who are victims of violence, whether organized or by individuals. It should provide for trial of of State racial crimes in Federal courts, for Federal removal of State officers like Sheriff Rainey, for total jury reform.

The administration of justice on an equal basis for all citizens is fundamental in a democratic society. After long and bitter years in which southern juries have denied simple justice to Negroes, the murderers of William Moore, Medgar Evers, four young girls in a Birmingham church, James Chaney, Michael Schwerner, Andrew Goodman, Jimmie Lee Jackson, Rev. James Reeb, and Jonathan Daniels—white and Negro—remain unpunished. It is this mockery of our judicial system that must be halted.

Fundamental to the achievement of equal justice is the total elimination of segregation and discrimination in our jury system. The right to trial by a jury of one's peers is basic to a democracy. A jury must consist of peers; it must not be for whites only. H.R. 14765 should be strengthened to accomplish this purpose *now*.

We ask the House Un-American Activities Committee to stop toying with the Klan. If the members of this committee really want to do something to destroy the Klan, they should join with the civil rights movement in revamping H.R. 14765 to make it truly a bill for justice in the South. Only when southern prosecutors and juries enforce the law equally against white and Negro will the terroristic activities of the Klan be stopped.

Already Titles III and V of the civil rights bill cover practically everything that would be unlawful under H.R. 15678. If the civil

rights bill is strengthened the way we ask, then the Klan will really face extinction. But there is nothing in H.R. 15678 that will come close to doing the job.

The Klan when it engages in its "unlawful activities," does so to deny Negroes and other minority groups rights protected by the Constitution. The Willis bill seeks to reach these acts by vague formulas of "clandestine organizations" and "criminal conspiracies." The civil rights bill, in contrast, spells out in Title V the specific prohibited acts and makes them punishable in Federal courts.

It does not burden the prosecution with the necessity of proving that the perpetrator of the crime was a member of a proscribed organization. In conjunction with Title V of the civil rights bill, the general conspiracy statute can be applied if the illegal deed results from joint operations.

The use of the existing general conspiracy statute is applicable without the necessity of proof that the conspirators are members of the organizations proscribed in the Willis bill.

The issue is clear. The proscribed act should be what the accused did, not who he is or what organization he is a member of.

Section 404(a) of H.R. 15678 makes it a crime to travel in or use facilities of interstate commerce to commit a crime of violence to further the purposes of a clandestine organization. Since the purpose of such organizations will doubtless be to deny rights under Title V of H.R. 14765, the civil rights bill would be preferable to prosecute acts of violence because it is unnecessary under that bill to show an interstate commerce aspect of the crime.

Apart from the general thrust of H.R. 15678, which is detrimental to needed civil rights protections, the bill uses such broad terms as to render it unconstitutionally vague. Examples abound: "or other means" in section 403(4); "any purpose, objective, or plan of such organization" whether lawful or not in section 406; "or any unlawful means" in section 407(a). This legislation might even cover organizations such as the Masons, Knights of Columbus, and college fraternities. Most important, it might cover civil rights organizations seeking to secure the vote for the disenfranchised and seeking to attain basic constitutional rights.

In the name of curbing terror and intimidation, this legislation will proscribe organizations that may violate trespass laws or disorderly conduct statutes solely because they protest segregation or local conditions in general.

In conclusion, Mr. Chairman, we oppose the Willis bill because it short-circuits the Constitution. Moreover, this legislation, even if constitutional, is totally inadequate to prevent and end acts of terror and intimidation.

The only real way to begin to deal with terror and intimidation is to enact a Civil Rights Act of 1966 that will prevent violence and end segregation in our judicial system.

The CHAIRMAN. Mr. Rauh, your prepared statement surprises me, to say the least. First of all, I want to make it crystal clear that I object—and very strongly—to your allegation that my bill is a fraud. I have been a lawyer for 40 years; I know you are one, too. I take it that you stand high before your own bar in the District of Columbia. I know of no one who stands higher than I do in my own State and

before the Federal Bar, to both of which I belong and our American Bar Association.

I have been a member of Congress for 18 years. Sam Rayburn used to say that—I see you smile. If he was a friend of yours, he was a dear friend of mine.

Mr. RAUH. He was a very respected friend.

The CHAIRMAN. He said a Member of the House had to have two constituencies, the people, to be sure, who vote for him back home, and that he better get along with his colleagues here on the Hill, too. I have tried to do that.

Now, during my 18 years of service here I have introduced, drafted, and amended many bills in those years. In addition to being chairman of this committee, I am chairman of four subcommittees of the Judiciary Committee, which handles more legislation than any other committee of the House. In fact, sir, I have more committee assignments and am the chairman of more subcommittees than any of the other 435 Members of the House of Representatives. I have never introduced or had anything to do with a fradulent piece of legislation.

Now, if you have any doubts about that statement, I challenge you to submit the question to any jury, please, and particularly the jury of my own peers, a panel of the House Members here, and you might include in that, please, the leadership of both parties at the highest level, from John McCormack to Carl Albert, to Jerry Ford and the whips, and then even to the housekeeper and the pages and other minor officials of the House of Representatives.

I regard your statement about fraud not only as an attack on my integrity, but also an attack of the same type on the four other Members of the House who have introduced identical bills.

There is a lot of heat in your statement, Mr. Rauh, but I am afraid very little light. You claim that my bill ignores the elementary concept of constitutionality. I deny that charge and I am not alone in denying it. The chief law enforcement officer of the United States, the Attorney General, testified yesterday. He said he saw constitutional problems in *some* of the bill's provisions but that is all. He, in effect, denied your charge.

This morning your charge was also denied, in effect, by the representatives of the Anti-Defamation League and the NAACP.

You have also accused this committee of toying with the Klan. I deny your accusation.

The Attorney General in his testimony yesterday, and Mr. Celler, the chairman of the Judiciary Committee, in a letter submitted for the record contradicted it. ADL and NAACP by their statements have contradicted it. I might add it has been contradicted by newspaper columnists, law enforcement officers, commentators, and others in all parts of the country.

You can make your sneery statements, the only type you have submitted; there is no way to stop you, but I don't think you do yourself or the ADA any good when you make them.

You recommended that my bill be amended to accomplish certain things, all of them in the area of civil rights. This surprises me, too. I thought you knew, sir, that you were aware that the House Committee on Un-American Activities has no jurisdiction in the area of civil rights and that the purpose of my bill is to reach organized clandestine activities. Your recommendations, therefore, are inapposite.

You claimed that Titles III and V of the civil rights bill cover practically everything that would be unlawful in my bill.

Now let's look at the facts when we go into that claim. There are 16 sections in my bill, 5 of which do not figure in any comparison with the civil rights bill. They are the first three and the last two, which spell out the title, congressional findings, definitions, the nonpreemption and separability of provisions sections. They are more or less common to all bills.

That leaves 11 sections with which Title V must be compared to see which is the most effective anti-Klan bill. Eight of these 11 spell out prohibited acts, namely, sections 404–411. Two others provide for injunctive relief and immunity in connection with it, 412 and 413. One deals with criminal contempt, 414.

How does Title V shape up against these 11 sections?

The fact of the matter is that seven of these sections encompass matters that Title V does not touch at all, sections 407 to 412 and section 414.

That means there are only four sections in my bill, sections 404 to 406 and section 413, in which there is some overlapping with the civil rights bill or its various titles. Each one of these sections is actually broader than the Civil Rights Act or its Title V because they are not limited to unlawful conduct motivated by questions of race, religion, or national origin which, incidentally, is an element of proof necessary at the threshold under the Civil Rights Act, but not at all under my bill.

So I stop where I began. Your statement surprises me and amazes me. Yesterday I said that I took the view that if hate organizations to the right or to the left—although I don't like to use those names; sometimes they are meaningless to me. Sometimes people ask me, "Are you a conservative or a liberal?" I said, "I don't know, I don't think I am either; I am a considerate Congressman, I consider my folks back home, that is what I am." I am not necessarily a conservative or a liberal, I like to be a considerate Congressman, considerate of my fellow men, considerate of my fellow human beings, considerate of my constitutents back home.

I did say that if hate groups to the right or to the left were engaged in peddling merchandise instead of notions and ideas and ideology, they could all assemble under the Astrodome in Houston and have one common sign for their wares, "Hate For Sale." I said that as cheap and as truly common as hate is, yet the price of it in freedom and liberty—to which you express such devotion—was very high indeed. And that price is discord, disagreement, the spreading of suspicion against fellow men and against public officials, against our very form of government.

Now, frankly, I did not mean to include and I do not include your organization, ADA, as a hate group. I can make that statement to you because I can't imagine that my good friend the Vice President of the United States, Hubert Humphrey, whom I know as a reputable member of your organization, could be in any way connected with a hate group.

I must say, however, sir, that judging from the mean things you had to say in your statement, including the accusation of fraud on the part of four other Members who are authors of my bill, that perhaps you

could have a little sub-sign under the Astrodome, "The Joseph Rauh Hate Section" of the broad "Hate For Sale" sign on the Astrodome.

I am sorry, sir, to have made that statement. I hope you didn't mean what you said. I would hope that you are man enough to take it back. If not, I am afraid I can't retract anything I have said.

Mr. RAUH. May I respond in this way, sir: First, I read the Attorney General's statement yesterday—and I don't have it in front of me, maybe one of your staff has it—but it said flatly that your bill raised questions of constitutionality.

The CHAIRMAN. Yes; I remember that, and I remember that he said, however, that when you read section 402 in context with section 403 that practically all of that difficulty was removed.

Now when you read in addition to the two sections, 402 and 403—when, in addition to taking the full bill in all of its parts into consideration, and you consider the following clause that we will give consideration to adding to section 403(4) as follows: "And whose history, purpose, policies, or activities embrace the use of violence, threats, intimidation, or harassment in accomplishing any of its objectives."

I say that when you take those elements into consideration, I would hope you would concede—like the NAACP individual and the Attorney General and all the previous witnesses—that we have the heart, the substance, the nub of your fears as you know them to be, practically totally eliminated.

Mr. RAUH. Sir, I was trying to respond to a number of things you said earlier. I will answer that, but before I answer that amendment question I will finish my response to your comments which I had started.

I had said that I thought that I had read correctly that the Attorney General had questioned the constitutionality of certain aspects of this bill.

Secondly, you indicated that you thought we recommended that your bill be amended in the regards stated in this statement. That is not a correct reading, sir. What we recommended was that the House Un-American Activities Committee, if it wants to deal with the Klan, help the civil rights movement in getting the civil rights bill amended so it will be strong enough to deal with the Klan.

Thirdly, in regard to your statement about Titles III and V not covering the same substance as your bill, I believe that the acts of terrorism which the Klan has committed are more covered in Titles III and V of the civil rights bill than they are in your bill because of the limitations in your bill of membership, criminal conspiracy in interstate commerce.

Fourth and possibly most important, I believe that a bill which purports to do something that it will not do does deserve the word "fraud." Your bill, in my judgment, will not have any serious adverse effect upon the Klan.

The CHAIRMAN. Well, let we say this: If you want to pursue that I am afraid we will have to get rough with each other. I wish you would desist.

Mr. RAUH. I will desist, but you asked me for my position on this and I was stating it. I am not going to say anything I don't believe to this committee or to anybody else. I am going to stick to what I believe.

The CHAIRMAN. Desist from the word "fraud."

Mr. RAUH. You asked me to explain what I meant and I was in the process of doing so. I am not going to say anything I don't believe, here or anywhere else.

The CHAIRMAN. If you are not willing to concede that when all sections are read as the Attorney General said they should be read—which removed practically all of his objections—and in addition to that when you read clause (E) of 403(4) that we will give consideration to and you are not willing to concede that that does not practically meet your objection, I would just say that you are less a lawyer than I had pictured you to be on TV where I have seen you many times.

Mr. RAUH. If I respond to that with respect to your words that you are preparing to add——

The CHAIRMAN. I will say we are considering——

Mr. RAUH. Excuse me, sir.

The CHAIRMAN. I was very careful. I am chairman of many committees; I never bind my members. I said a while ago that I personally thought there was great merit in it. I am saying that it will be considered by the committee and I repeat that personally I think there is merit in the addition of that clause.

Mr. RAUH. I did not mean to misconstrue what you had said. Assuming those words were added, I do not think that they in any way meet the fundamental situation. And if I may state it, it is this: The reason that the Klan survives in the South is because white people can assault and kill Negroes without going to jail for it. The reason for that is that prosecutors——

The CHAIRMAN. I am making it possible to send them to jail in 16 sections.

Mr. RAUH. I don't believe you are, sir.

The CHAIRMAN. In Federal jails, too.

Mr. RAUH. I was trying to say that I don't believe you are, because unless you do something about the system of justice in the South, unless you do something about prosecutors who wink at juries, unless you do something about lily-white juries, you can have all the laws in the world, but you are not going to send Klansmen to jail. And that is what is wrong with this bill.

The CHAIRMAN. You talk about white people in the South. I am from the South; I am proud of it. I said yesterday that belonging to or believing in hate groups would not, in my judgment, make me either a better southerner or a better citizen. I don't believe in that sort of thing. When you are talking about lily-white juries, please don't infer that I am of that ilk or believe in such things.

Mr. RAUH. I did not suggest that. I said, though, until we get laws which revamp the southern system of justice from stem to stern, you are not going to send Klansmen to jail where they belong and you are not going to stop that, and that is what is wrong with your bill. It does not deal with the root cause of this problem which is simply in the South a white man gets off when he assaults a Negro. That has got to be dealt with.

The CHAIRMAN. Let me say something, sir. I said a while ago I have been a lawyer for 40 years. I am not by nature a criminal lawyer, but let me say this, sir, that for 30 or 27 of those 40 years, when I was in active practice in my home town—we have two criminal terms a year—

I made it a practice to represent persons charged with crimes and I would say that 98 per cent of my criminal practice was representation of the colored people that you talk about. And I made it a habit that that was my contribution to human society and human action, and so help me, most of the times I didn't charge those people anything. So don't talk too loosely or too flamboyantly or too freely about southern injustices and winking and lily-white juries, I want no part of that.

Mr. WELTNER. Mr. Chairman, I was somewhat disappointed to see Mr. Rauh's statement to the effect that this is a fraud on the American public. I have had written here the definition in *Webster's New Collegiate Dictionary* of the word "fraud."

I wonder if Mr. Rauh accepts *Webster's Dictionary* as a usually reliable source on the use of American words.

Mr. RAUH. It may be, and if I used the wrong word I will continue to explain what I mean by it.

Mr. WELTNER. Let's see: "Fraud. Deceit, trickery, *specif*: intentional perversion of truth in order to induce another to part with something of value or to surrender a legal right."

I wonder if, in that context, he still characterizes this legislation as a fraud on the American public.

Mr. RAUH. I may not mean it in the exact sense in which that is used, Congressman Weltner. I want to explain it in the sense in which I used it. It is a deal which purports to deal with the Klan which will not in any way adversely affect the Klan. That is the sense in which I used it. If it is a misuse in that sense, I withdraw it.

Mr. WELTNER. Is it an intentional perversion of the truth?

Mr. RAUH. No, I do not believe so. And I told you at the beginning I have been trying to explain what I mean by that word, and I do not withdraw it as I mean it. If it meant something else and it is a misuse of words, then I would be sorry. To me this bill purports to deal with the Klan and will not have any adverse effect on them.

Mr. WELTNER. Well, I am not in any way undertaking to get the witness to recant, but I would like to have his statement gauged against this Webster's definition. I take it he does not mean quite what Webster says; is that correct?

Mr. RAUH. Congressman Weltner, I have said what I meant. I can't say it any better than I said it. I will say that if it is a misuse of terms, it is a misuse. But to me a bill that purports to do something which is not going to have that effect, it is in that sense I used the word.

Mr. WELTNER. Now, inasmuch as Mr. Rauh is particularly concerned about the effect of this legislation in the South and holds very strong viewpoints as to what its effect will or will not be in the South, I think possibly it would be important to have some idea of his own personal experiences with regard to southern problems and how he may have participated in southern lawsuits or lived in southern communities. I wonder if he can give us the benefit of any such experience, bearing in mind, Mr. Rauh, that the three members of this committee present today are all southern men and all of us have taken substantial heat over some matters in the past. I wonder if your experience is greater or better or more elucidating than ours has been, as lifelong southerners?

Mr. RAUH. Well, I would say my experience in the civil rights movement has been greater than yours. I can't say I have ever lived in the South because I have not. But I have argued cases involving the civil rights matters; I have been in Mississippi and represented people there. I represented the Mississippi Freedom Democratic Party; I had to live through all of their many complaints. I think I understand, from the cases that I have been in and the cases in the Supreme Court, what is wrong with the southern system of justice. And what is wrong is that white and black don't get equal treatment.

Even you, Congressman Weltner, won't deny that white and black don't get equal treatment in the courts of the South.

Mr. WELTNER. I won't deny that that has certainly been the occasion in some instances and in too frequent instances in the past.

Let me ask you this about your statement that it is time for us to stop "toying with the Klan." Were you here when Mr. Justin Finger of the Anti-Defamation League testified this morning?

Mr. RAUH. No, sir.

Mr. WELTNER. Well, Mr. Finger stated that his duties consist of the direction of the Fact Finding Bureau of the Anti-Defamation League; that the best estimate that they might have with regard to the total Klan membership in the United States in October 1965 was 50,000; that in February of 1966 that figure had dwindled to 20,000; and that at present he concludes the membership to be around 29,500. Those dates happen to coincide with the commencement and termination of the investigative hearings of this committee and they show that during the period of this investigation Klan membership had dwindled by a percentage of 60 percent.

I wonder if that is considered by you as "toying with the Klan"?

Mr. RAUH. Yes. I think there is only one way to deal with the Klan, Congressman. I think that is to revamp the system that a Klansman will go to jail when he assaults a Negro. And it seems to me the rest of the methods are toying; that the one method of dealing with the Klan is to have a system of justice where the prosecutor and the jury will give them the same treatment when they assault a Negro that a Negro gets when he assaults a white man. Until you get that, the rest of this is exactly what I said it is.

Now it so happens that I don't agree, as I think is well known, with many of the investigative methods of this committee. That is a separate problem, but I think in all candor I should state that I don't think it is the function of this committee to deal with exposure for exposure's sake, but that is a separate problem I only mentioned to lay the whole thing on the record.

The real point I am making this afternoon, whatever may be the right or wrong choice of words, the real point I am making is that you are going around about it the wrong way. You are never going to stop the Klan until a Klansman can go to jail for what he does.

Mr. WELTNER. The action of the House Judiciary Committee which did not include some of the recommendations that you have in the present civil rights bill, do you consider that to be a fraud on the American public, too?

Mr. RAUH. No, sir; that bill is exactly what it says it is. I don't consider it that in any way, shape, or form, Congressman Weltner. I think the bill is too weak. We are going to try next week through

various civil rights efforts to strengthen that bill. I don't know whether we will be able to do it. I hope we will have your support when we try to strengthen that bill.

Mr. WELTNER. Is it your contention that that bill, and nothing but that bill, could conceivably under any possible circumstances constitute any contribution to the administration of law and justice in this country?

Mr. RAUH. I don't take that position, but I do take the position that this bill will not add to it.

Mr. WELTNER. Well, now in the case of the *United States* versus *Original Knights of the Ku Klux Klan*, Judge Wisdom, presiding over a panel of Federal judges in the Eastern District of Louisiana, rendered a decision on December 1, 1965, issuing a restraining order against the Original Knights of the Ku Klux Klan and in that he stated as follows, after stating that there were indeed Civil Rights Acts that had been passed.

He went on to state: "The most effective relief for him"—speaking of a Negro who had been tried for his rights—"and for all others affected by the intimidation may be an injunction by the Nation against the private persons responsible for interfering with his civil rights."

I take it that you think the use of the injunctive process could never under any circumstances have been of any value in protecting the rights of individuals in this country?

Mr. RAUH. Oh, no, sir. I am one of those who has fought for what is known as Part 3 since 1956 and most members of this committee have opposed that. What is now Title III of H.R. 14765 is an injunctive provision, of which I am one of the authors, and it will, I think, do a much better job than the injunctive provision in 15678, and I call your attention to that provision. It says:

> Whenever there are reasonable grounds to believe that any person is about to engage or continue to engage in any act or practice which would deprive another of any right, privilege, or immunity granted, secured, or protected by the Constitution or laws of the United States on account of such other's race, color, religion, or national origin, such other person in his own right, or the Attorney General for or in the name of the United States may institute a civil action or other proper proceeding for temporary or permanent preventive or mandatory relief, including application for temporary restraining order or preliminary injunction, permanent injunction, or order requiring posting of a bond to secure compliance with orders of the court.

Mr. WELTNER. That is Title III of H.R. 14765?

Mr. RAUH. Yes, sir.

Mr. WELTNER. That refers to public education.

Mr. RAUH. No; you have an earlier draft.

Mr. WELTNER. This is 14765.

Mr. RAUH. Not as reported out by the committee, sir. Here is the one as reported out by the committee.

Mr. WELTNER. Then you have no objection to a provision that would provide for a restraining order or injunction against any person or against any organization that is engaging in the deprivation of the rights of others?

Mr. RAUH. Well, subject only to the word "organization"; there you run into problems of clairity, and so forth. Whether you get it against an organization, what effect that may have on an individual member of the organization not knowing it, but if you put it on the ground of injunction against the person, I certainly would be receptive.

Mr. WELTNER. Who?

Mr. RAUH. Named people. There is no problem.

Mr. WELTNER. What about persons named and their agents or associates?

Mr. RAUH. As long as it is clear enough who it is covering, I would be in favor of it.

Mr. WELTNER. So you would have no objection to section 412, I believe it is, of this bill so long as the style of the case were adequate to reasonably apprise the defendants just as to who might fall within the scope of the injunctive decree?

Mr. RAUH. The difficulty with section 412, as I read it, is that it is much more limited than the Title III which I read to you. Section 412 seems to be limited to a criminal conspiracy, and I don't believe one should so limit it. I think if there is no conspiracy at all there would certainly be reason for an injunction as you have in Title III of the Civil Rights Act.

Mr. WELTNER. Well, if there were a criminal conspiracy that would be no reason to withhold the injunction, though; would it?

Mr. RAUH. No, sir.

The CHAIRMAN. Let me say this: I take the opposite view from what you do. I take the position that our bill is broader than Title V of the Civil Rights Act, even the proposed Act of 1966.

Take, for instance, the injunctive relief in Civil Rights, say all Civil Rights Acts. At the threshhold the proof must be that the relief is to afford relief against matters involving race, religion, or national origin. My bill is not so limited. My bill provides injunctive relief against any unlawful act and any attempt to interfere with federally protected rights.

Now I gave some illustrations yesterday of what the civil rights bills do not now and, as far as I know, never will reach. I took this illustration, for instance I will try it out on you. The Attorney General answered it very frankly and agreed with me.

I said that suppose, under the civil rights bill, a Klansman would assault or murder a white atheist, could you prosecut under Civil Rights? Really, he has no religion. Religion is not involved, race is not involved; it is a white man.

I gave a specific illustration of the horror wrought by this silly old man from Tuscaloosa parading around here with his Grand Dragons as though he were a Hitler and calling himself the Imperial Wizard of an Invisible Empire.

Now let me ask you a very frank question: You said that you had very strong feelings against this committee. I hope they are not so strong, really, as to warp your mind as a lawyer in the interpretation of the bill. I presume this is your honest, sincere belief—though contrary to the one I have taken that our bill is broader than the civil rights bill.

When you say—you keep on repeating—that it will never afford any relief, it has got to be the civil rights bill or nothing, which I say is a narrower bill, then your position really is contradicted by a great friend of mine and a great civil libertarian whose name is Emanuel Celler. He disagrees with you. The present Attorney General, the previous ones, were awfully good friends of mine. The present one disagrees. I think Bob Kennedy would disagree with what you have to say here

today about the fraudulent bill that the members of this committee foster on the American public, and all the rest.

I know your devotion to civil libertarianism. I know that during the KKK hearings you took the view that we had better leave it alone; that you came, in effect, to the rescue or to the defense of Ku Klux Klansmen that I know you have deep resentment for. I have seen you take up the cudgel on the same legal basis, as you yourself said, for the Communist members.

Now could you not find it in your heart to believe at least Members of Congress would be entitled to the same consideration of your organization and to belief that we are trying to do the best we can and that we do really mean to provide a bill that would give relief?

Mr. RAUH. May I just respond to that in two separate ways?

The CHAIRMAN. Trying to cross-examine you, Mr. Rauh, is like trying to lasso an oyster. I know I can't do that.

Mr. RAUH. Well, I don't know whether to take that as a compliment or not, but I would like to say—and I don't know how you will take this, I hope that this does not hurt you in Louisiana—I hope you are successful in that race to which you referred.

Secondly, I would like to say that the breadth of the two bills involves two seperate problems, and I think this is where the confusion may lie between the members of the committee and me.

The breadth of the civil rights bill as we want to amend it meets with two problems; first, the problem of making southern justice more equal. Your bill does not deal with that at all. The second problem is one of making certain things Federal crimes, and it has been on that that the argument has been, which is the broader.

Now, I am convinced that the civil rights bill here is much broader than yours, but I, too, am not satisfied that the civil rights bill is broad enough.

When I said that I thought the most valuable thing that could be done would be to help broaden that situation so it will cover all violent assaults by the Klans, in reference to the particular case that you referred to of the Klansmen killing the white atheist, my answer to that is, it is not covered by the civil rights bill, but that it is rather an academic question.

The real question that is before Congress is: Are we going to do something to protect Negroes and civil rights workers from the Klansmen?

The CHAIRMAN. By all means. By all means, and I am so glad and so happy that the beneficiaries of my bill—but again, that has to do with the breadth of the two bills.

I take it that my bill is broader in that it reaches the Catholic, the Jew, the white man, as well as the Negro, and it is specifically in that area I think that my bill is broader.

My bill is not intended to be a civil rights bill, not in the sense that I don't want them to be covered or protected, but in the sense that it is intended to overreach that and reach all Americans who are the victims of terrorism.

Mr. WELTNER. Mr. Chairman, following Mr. Rauh's point about the right of the atheist being an academic point, what would happen if in a city like Bogalusa a group of white persons decided they were going to invite another white man to come down and talk to them

about community problems, and then there was an organization in that city that passed the word around by stickers and by telephone calls and by cross-burnings and said anybody who goes to that meeting is going to be considered an integrationist, and treated as such?

Now, will you agree with me that under Title III of the Civil Rights Act of 1966, as amended by the committee, there would be no injunctive power to protect the citizens of that community from such as event?

Mr. RAUH. It would depend on what the purpose was. If there was a racial connotation in the thing, I think it would be covered.

Mr. WELTNER. The bill says on account of such other's race, color, religion, national origin, and all of these are white persons.

Mr. RAUH. Well, the white person would not matter, if it was a racial motivation. That is the whole purpose of the thing.

His example I would put this way. Congressman Weltner, the civil rights bill which we have been supporting is one where whites working in the civil rights field are given the same protection as Negroes working in the civil rights field.

The question is: Are they working in the civil rights area?

Indeed, we have suggested a definition of race, which is that race includes not only persons of another race, but those who advocate rights for persons of the other race.

Mr. WELTNER. You mean you advocate changing "race" to include a state of mind?

Mr. RAUH. Actually we have the exact definition—I have not got it before me. It is in the Douglas-Case bill. Actually, this civil rights group originally sought much of which it did not get in the bill, as the one introduced in the House by Congressman Diggs and Congressman Fraser and one or two others, and in the Senate by 21 Senators, including Senator Douglas.

In that bill we define that a crime by reason of race, is a crime by reason of race if it was intended to get at a Negro or at a white person who was advocating the rights of Negroes.

Mr. WELTNER. But this language in the House bill says on account of such other's race. Now, that would not mean the same thing that you are mentioning.

Mr. RAUH. It would with our definition, yes.

Mr. WELTNER. But that definition is not in the bill.

Mr. RAUH. We are trying to get it in.

Mr. WELTNER. But it is not in the bill. If it does not get in the bill, it is not in the bill now, then this Title III would not cover Bogalusa's situation.

Mr. RAUH. If there was nothing more in it than you put, the answer is correct.

Mr. WELTNER. All right. If you look at section 412 of the bills before this committee, the injunctive relief provided in this case would apply to the Bogalusa situation, would it not?

Mr. RAUH. If it was as you put it a "criminal conspiracy," a thing that I have grave doubts about your ability to show in a given instance.

Mr. WELTNER. Do you believe that the Original Knights of the Ku Klux Klan is an organization which advocates teaching, employing acts of violence, intimidation, or harassment for the purpose of coercing citizens to do, or not to do, any act or thing, or to engage in or refrain from any course of conduct?

Do you believe that, sir?

Mr. RAUH. I think as I interpret your language that would be correct. I point out to you that they have been trying to get the Communist Party under this kind of general language for years, and it, too, falls within it, but the court simply does not like these membership operations. You lose every single time you work on that basis. The Supreme Court has knocked out everything connected with the Internal Security Act, of which——

The CHAIRMAN. Mr. Rauh, let me say we were importuned by many civil libertarians to have a registration similar to the one in the Internal Security Act, which, by the way, is my bill. I reported that bill out of the Judiciary Committee in 1950. But I resisted it here, because I don't think that it will work.

Frankly I confess this to you, talking in terms of law, I don't find it shocking that the Supreme Court concluded, in light of the Smith Act and Internal Security Act and the other acts, that asking a person to sign and say, "I am a Communist," involves his fifth amendment rights.

That does not shock me, that the Supreme Court said that. I am not shocked at decisions. As a lawyer, I look at these things pretty objectively.

Mr. RAUH. I am glad you resisted the registration thing.

The CHAIRMAN. I don't think it would work.

Mr. RAUH. I don't, either, but I don't think this is going to work, either, sir.

The CHAIRMAN. I will tell you about a bill I am preparing to introduce. I am going to overhaul the Internal Security Act, which came out of this committee and over which we have jurisdiction, by an amendment to the Internal Security Act. And I tell you how it will work; I will try it out on you.

Do you know under the structure of the present Internal Security Act you have the Subversive Activities Control Board. Someone is alleged to be a Communist. Then you have adversary proceedings with representation of counsel and evidence is heard, and the Board concludes that Mr. A is a Communist.

Then thereafter it lays the foundation for registration, for criminal prosecution for failure to register, and all the rest, which the courts, as I said, negated, made ineffective in part.

After the proceedings before the Board, I would stop right there, and not go through the involvement of possibly running afoul of the fifth amendment right. I would do this by saying that well, thereafter the Attorney General shall have a roster and do the registration, not for purposes of prosecution, but if we had that—and this is not exposure for the sake of exposure, sir. We have not had a new Attorney General's list since when—1957 something?

Anyway, I am going to overhaul it by saying that there will be a register, all right, but it will be a register kept by the Attorney General, and not go on and compel or try to compel the man to come forward and sign and invoke, "I am a Communist" or "I am a Klansman."

I don't believe the old registration or disclosure provisions are going to work altogether. The courts have expressed themselves on this subject, and I thought it was the better part of wisdom not to fool with it in klanism.

Although there may be a distinction between klanism and communism, I just did not want to monkey with that.

Are we too far apart?

Mr. RAUH. Well, I am afraid we are. I hate always to be far apart, but I cannot help it, and still stand by the first principle, which was I am not going to say anything I don't believe.

I cannot bring myself to a registration system, whether it is one place or another. Most respectfully, I just oppose the idea of registration, and I personally don't believe the Internal Security Act is going to work. It has not worked up to date, by virtue of the Supreme Court's decision, and I just cannot feel that it is subject to improvement.

I certainly don't challenge the fact that I am sure your effort is to improve it, but I cannot bring myself to feel that it will make a substantial difference, or that you are going to accomplish the ends you say.

The CHAIRMAN. At least, are we together in not having a self-disclosure on registration?

Mr. RAUH. We sure are.

The CHAIRMAN. Short of my proposal, I might even go to you for a proposal.

Mr. RAUH. Well, it is awful nice of you, but my general reaction to it, I have ideas on these subjects, I cannot help it, I have worked in this field. My reaction to the problem of how you deal with communism is to get the Communists for espionage and sabotage, and leave them alone otherwise.

It is not a dissimilar idea that I have about the Klan, that you get them for the acts they commit, and not for membership in other things.

I think we do agree on another point, and that is that the Klan and the Communist Party are very similar operations, in the sense of the way they perform and their danger to our country.

The CHAIRMAN. Their methods parallel.

Mr. RAUH. That is right.

The CHAIRMAN. Secrecy, front organizations.

Mr. RAUH. Right. The difference between us is not the difference in that belief. The difference between us, I think, is you deal with both on the basis of the particular acts without regard to their membership.

The CHAIRMAN. I don't, and that is one more point. One more time I say that I am in direct disagreement with you.

For instance, under the Civil Rights Act, if there is a kidnaping or a murder, it must be related to race, color, national origin. But the murder of a Lemuel Penn is a murder, or the murder of a Jew is a murder, and the kidnaping of a person is a kidnaping, and you don't have to prove or relate it to race and so on, which I think is a burdensome additional element of proof that my bill does not require, and the Civil Rights Act does.

Mr. RAUH. Sir, may I most respectfully suggest that what you require is more burdensome.

The CHAIRMAN. I disagree.

Mr. RAUH. All right. We will just agree to disagree.

The CHAIRMAN. I hope we can do so.

Mr. RAUH. I am smiling.

The CHAIRMAN. You were mighty serious when you read the statement.

Mr. RAUH. I am still serious, but I enjoy the fact that we can try to find areas of agreement. Apparently we found at least one, which was that the Klan and the Communist Party operate in approximately the same way, and they require the same methods to get at them.

We disagree on the methods to get at them.

Mr. WELTNER. Well, Mr. Chairman, in view of Mr. Rauh's organization's belief in democratic political process, if this bill passes the House and the Senate, voted on by a majority of the people's elected representatives, being a democratic political action, I am sure he will agree with what we have done as a product of our work.

Mr. RAUH. Congressman Weltner, subject only to the reservation that I may try your case in the Supreme Court some day, subject only to that, we will accept whatever happens.

One thing I want to make perfectly clear, whatever the Congress passes, and the court upholds, that is the law of the land. Certainly we may disagree here on what ought to be done, but we would certainly agree that that would then be the law of the land, to which all people would subscribe.

The CHAIRMAN. That is at least two things we agree on.

Mr. RAUH. Well, we are working hard here, now.

Mr. BUCHANAN. Mr. Chairman, at this late hour, with all this harmony that we have, I would not want to sound a voice of discord, but as the loyal opposition, may I respectfully ask Mr. Rauh: Don't you think it is reasonable to assume that when a distinguished attorney appears before a committee of the Congress, that the language which he uses shall be somewhere within hailing range of Webster's definition of the term?

Mr. RAUH. I think that is correct, and I am not challenging that, I simply stated my definition, and I stand by it.

I would like to say to the Congressman from Alabama that I believe it is your system of justice there, or rather injustice, that is going to make this law not work until we get at that.

Mr. BUCHANAN. Now, may I say to the gentleman that he just referred to my system of justice, and, Mr. Chairman, I do hate to bring up politics in this matter, but I am heartily aware of the prevailing party in my State.

May I say further, sir, that, as you said this morning, it has been an old, and in my judgment rather bad, habit for many years for people who live outside the South, and who have never lived within the South, to practice this thing of South-baiting.

We have heard about southern justice, and about the southern system, and about all of this which is aimed at the South, and the things that are wrong within the South. Certainly we are aware that there are many things wrong within the South, but it would seem there is some evidence—I don't want to make an intemperate statement or extremist statement or use language that would mean other than what I am saying, but it would seem that there is some evidence that would indicate that there is some difficulty in this general area outside the South, that there is some evidence to date this may even be a national problem, and indeed may even be an international problem.

Indeed, it would seem to me that the time may eventually come when South-baiting will just not do the job any more, and we will have to face up to national problems and solve them everywhere, frankly and honestly.

Would you find any merit in that?

Mr. RAUH. We are going to have another agreement. It may kill you, but we are going to have another one.

I think that the civil rights problems have become national problems and are national problems. I think, for example, that the housing problem is clearly a national problem, and indeed it may be worse in the North than in the South, but what I cannot understand is why you will not help us northerners now get the provision for antidiscrimination in housing.

This is something that is a national problem, and I think you are right in saying that a lot of people who have been talking when it was a southern problem are not talking as loud now that it is a national problem.

I think the difficulty, therefore—we agree on the basic problem that it is now a national problem, but we would like your help, now that it is a national problem, to help us clean up the northern cities, where there is discrimination in the suburbs.

Mr. BUCHANAN. One other point——

The CHAIRMAN. I want to say that to get that relief you are before the wrong committee. You have to go to the Judiciary Committee.

Mr. RAUH. I agree with that, too.

The CHAIRMAN. That is the fourth thing.

Mr. BUCHANAN. One more thing, Mr. Chairman, and then I will yield back.

I certainly would not pit myself further against such an able man, but I would say simply this, that the jury which did bring the convictions under the civil rights law in Alabama in the Liuzzo case was an Alabama jury, composed of Alabama citizens, and presided over by an Alabama judge.

So I hardly believe it would be scientific or reasonable or fair to virtually throw the entire South, and all its people, into the same lump of injustice, discrimination, and violation of civil rights.

Mr. RAUH. I don't have to challenge that. Possibly we would find a fourth point of agreement, where you said before that you are really not responsible for the present administration in Alabama, and I take it we could agree that Governor Wallace's administration is not the best system of justice in Alabama.

Mr. BUCHANAN. We might be getting close.

Thank you, Mr. Chairman.

The CHAIRMAN. Let me say this, Mr. Rauh. Really one of the kindest things that the Attorney General said yesterday was that I as chairman and the committee in general had cooperated to the limit in helping to see to it that the rights of individuals were protected during the hearings, including not only witnesses, but those charged before State and Federal authorities with crime. It may be that people did not catch on to that.

That is the problem that we face all the time on this committee. So we held these hearings as we do others. We encountered here problems we knew existed in advance.

I knew that there were prosecutions before the Federal authorities under the old Section 242 Act. I knew there were State prosecutions, and you would be surprised how very careful we were, and always are, in these hearings.

There are ways of doing it. This is not done in any way but the right way, now. We have to skirt certain passages and testimony. You can control that by your presentations, so that these sharp points are not brought in focus, so that you are not perhaps violating them here.

Oh, I know, we have some people who don't like this committee too well, and how I can hear what their voices would be saying if we had prejudiced, let's say, the rights of those in the case of Colonel Penn. And that case was before us from the word, "Go." We had the confession, or still have, a copy of the original in my file in that case.

We knew all about that case. If I had gone forward and presented that without regard to pending criminal proceedings, I know what people would have said: "Here is a southerner deliberately creating prejudice to let them go again."

Thus far, and I knock on wood, I have never been caught in that trap, and that is brought about by a very good working liaison with the Department of Justice, which sees to it that we can deliberately avoid prejudicing the rights of witnesses or known prosecutions. Of course they are all known to State or Federal Governments.

That was a very kind statement for him to say, and that is the one statement that I appreciated, because he knew the problem, and I was aware of that problem all the time. We took very great care not to prejudice the rights of individual witnesses or the rights of people involved in pending criminal prosecution.

I thought perhaps you would say, "Well, that is fine."

Mr. RAUH. Well, I did not know what you wanted me to say. I would have agreed.

Let me just make one more point.

The CHAIRMAN. Well, you are going to have the last word.

Mr. RAUH. No, I don't want to. I even withdraw that.

You said why did I not say, "That is fine." I said there are certain things in there that I would have been saying that would not have been within what I believe. There are certain oppositions I hold to the charter of this.

Sir, I have been in front of the Supreme Court several times on the House Un-American Committee. I have been in the court of appeals.

The CHAIRMAN. Not as presently constituted, you have not.

Mr. RAUH. That is correct.

The CHAIRMAN. This one has never been overruled.

Mr. RAUH. Well, I have not had a chance yet, sir.

The CHAIRMAN. I wish you bad luck, because it would be in keeping with your idea of justice if you lose the case.

Mr. RAUH. If I lose, I accept the lumps along with the victories.

I did not want the last word, and I don't want the last word.

The CHAIRMAN. You have lumps all the time.

Mr. RAUH. But you looked at me as though I was ungracious in not agreeing with the Attorney General's statement. I cannot agree with it, sir, in toto, because of my general feelings toward the charter of this committee.

I am not being ungracious to you; I just am trying to protect my own integrity. I am not going to say something about the activities of this committee that I don't honestly believe, and you would not want me to.

I hope now I can stop, and you can have the last word, which is your due as chairman, sir.

The CHAIRMAN. On this note, the committee stands in recess until tomorrow at 10 o'clock.

(Whereupon, at 3:45 o'clock p.m., Thursday, July 21, 1966, the subcommittee recessed, to reconvene at 10 a.m., Friday, July 22, 1966.)

HEARINGS RELATING TO H.R. 15678, H.R. 15689, H.R. 15744, H.R. 15754, AND H.R. 16099, BILLS TO CURB TERRORIST ORGANIZATIONS

FRIDAY, JULY 22, 1966

UNITED STATES HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE OF THE
COMMITTEE ON UN-AMERICAN ACTIVITIES,
Washington, D.C.

PUBLIC HEARINGS

A subcommittee of the Committee on Un-American Activities met, pursuant to recess, at 10:10 a.m. in Room 429, Cannon House Office Building, Washington, D.C., Hon. Edwin E. Willis (chairman) presiding.

(Subcommittee members: Representatives Edwin E. Willis, of Louisiana, chairman; Joe R. Pool, of Texas; and Del Clawson, of California.)

Subcommittee members present: Representatives Willis and Clawson.

Staff members present: Francis J. McNamara, director; William Hitz, general counsel; Alfred M. Nittle, counsel; Donald T. Appell, chief investigator; and Philip R. Manuel, investigator.

The CHAIRMAN. The subcommittee will come to order.

For the purpose of these hearings, the Chair wishes the record to reflect that I have appointed and do now appoint a new subcommittee to conduct the hearings. The subcommittee is composed of myself, as chairman, and Mr. Joe Pool of Texas and Mr. Del Clawson of California.

I also want to state for the record that a quorum of that subcommittee is present; namely, myself and Mr. Clawson.

STATEMENT OF HON. DON EDWARDS, U.S. REPRESENTATIVE FROM CALIFORNIA

The CHAIRMAN. Before calling the first witness, I would like to submit to the reporter for inclusion at this point in the record a statement by our colleague, Congressman Don Edwards of California.

(Congressman Edwards' statement follows:)

STATEMENT BY CONGRESSMAN DON EDWARDS REGARDING H.R. 15678

Mr. Chairman and distinguished Members of the Committee:

I should first like to make clear my support for the basic purpose of this bill, to rid this country of the evil of organizations like the Ku Klux Klan. But I believe there are serious constitutional infirmities in your proposed legislation,

and that linking criminal acts with organizational membership is unnecessary and unwise.

Title V of the civil rights bill of 1966 effectively reaches the racial crimes about which you are so rightfully concerned and it reaches those crimes whether or not the perpetrator is a member of the Ku Klux Klan. I believe that under H.R. 15678 prosecution will not only be more difficult because of the necessity of proving a clandestine organization or criminal conspiracy, but more important, the bill will not even reach the nonorganization criminal. Furthermore, H.R. 15678 is dependent on the interstate commerce clause. I believe the Supreme Court made it quite clear in *United States* vs. *Guest* that Congress, under sec. 5 of the 14th amendment, has the power to punish private conduct interfering with rights guaranteed by the Constitution. Therefore, proof of use facilities of commerce or the mails, is unnecessary and adds another burden to effective prosecution of the crimes we seek to make Federal violations. It is my conclusion that H.R. 15678 is substantially weaker than Title V of the civil rights bill and at the same time gravely jeopardizes legitimate rights guaranteed under the first amendment. The real problem is not solved and serious new problems are created.

In attempting to reach the criminal activities of the Klan, you have used definitions that are so broad and vague that you sweep into the category of "clandestine organization" college fraternities, for example. While I am not in favor of hazing, which is surely intimidation if not violence, I am opposed to making it a Federal crime. The CIA appears to fit the definition of a clandestine organization, as well as the Masons, the NAACP in certain States, and many other bona fide groups. The reach is so broad and so inhibitive of the right to free association and privacy that I cannot see how it can be squared to fit the constitutional requirement of a rational basis for discrimination between classes or groups.

The bill you are considering also infringes on freedom of speech with no distinction between "inciting language" and advocacy of abstract doctrine. I suppose that the debate now going on among certain civil rights advocates about whether nonviolence as a technique of political change is no longer effective, would be a violation of this bill, if the debate was carried out by a civil rights organization that kept its membership secret. Sec. 407 includes "any person who * * * advocates the duty, necessity, desirability, or propriety, by the use of violence, force, intimidation, or any unlawful means, of (1) furthering or accomplishing *any* purpose, objective, or plan of any clandestine organization doing business or operating in interstate or foreign commerce * * *." It seems to me that this section proscribes advocacy in the abstract, and may even reach advocacy of such actions as economic boycott. My own view is that the most obnoxious doctrines must be allowed expression and that proscription of the speech we deplore endangers the liberties of all of us.

In Sec. 408 I fail to see any rational connection between membership in a clandestine organization and use of the telephone. If a person is to be prosecuted for using the telephone in connection with a crime, what does his membership have to do with it? Especially since the criminal act involved may or may not have anything to do with the organization. Here again I believe there is arbitrary discrimination violative of due process.

Sec. 409 outlaws oaths or pledges to conceal knowledge of offenses. It apparently outlasts membership itself and no proof of any overt act of actual concealment of an offense is necessary. Under this section, as I read it, if you pledge to conceal offenses by members of the organization, you are in violation, but if you pledge generally to conceal crimes you are not. In any case, it seems to me that we have had enough of such roundabout legislation, such as requiring registration of subversives, that simply doesn't work, and we ought to concentrate not on membership in organizations, and the doctrines advocated, but on the criminal *acts* of people.

Sec. 410 makes it a crime for an officer or member to embezzle the funds of a clandestine organization. Embezzlement is already a crime in every State, and why the Federal Government should, in effect, give additional protection to members of the Ku Klux Klan against their own internal embezzlers is more than I can figure out. For myself, I would not be upset if all of their assets are embezzled tomorrow and the embezzlers flee the country.

Sec. 412 authorizes injunctions against anticipated future crimes which the Attorney General believes may be committed by a criminal conspiracy, which is defined so broadly that again I believe that it is void for vagueness. It is essentially a dragnet injunction reminiscent of the days of the Palmer Raids and the suppression of labor unions. The injunctive power is an awesome weapon

and I do not believe it should be used without the most careful delineation of its scope.

My analysis of particular difficulties with the bill is not meant to be comprehensive, and I am not suggesting that the bill should be amended. I believe that the underlying basis of the bill is wrong and cannot be corrected by amendment. I would hope that every member of this committee would direct his support to the civil rights bill which will be before the House next week. Title V of that bill will be far more responsive in stopping racial crimes in our country and does not have the serious disabilities of H.R. 15678 in limiting first amendment freedoms.

RESOLUTION ADOPTED BY THE AMERICAN LEGION, DEPARTMENT OF OHIO

The CHAIRMAN. I would also like to read for the record a telegram just received from Charles William Heacock, immediate past commander of the Ohio Department of The American Legion. It is addressed to me as chairman of this committee and reads:

The American Legion of Ohio in department convention unanimously adopted on 16 July 1966 Ohio Resolution R77 urging appropriate legislation to control the activties of the Ku Klux Klan and related organizations in accordance with determination of the Committee on Un-American Activities. I respectfully request that a copy of Ohio Resolution 77 be made a part of the record of the committee's legislative hearings in that regard.

The resolution referred to is now offered for the record at this point. (The resolution follows:)

Whereas: The Committee on Un-American Activities has conducted extensive investigations and hearings concerning the Ku Klux Klan and related organizations, and,

Whereas: It is the determination of the Committee on Un-American Activities that there exists within the United States certain Ku Klux Klan organizations which in varying degree and manner engage in activities which adversely affect the General Welfare of the United States and tend to subvert constitutional processes, and,

Whereas: These organizations, though often unrelated to one another, and having different objectives or purposes, share, nonetheless, the common traits of secrecy for the purpose of intimidating, threatening, or otherwise coercing citizens of the United States to compel such citizens to do or not to do those acts which will conform with the purposes and objectives of such organizations, and,

Whereas: The Committee on Un-American Activities will, in the near future, hold public legislative hearings in regard to such organizations to obtain the recommendations of interested individuals and organizational representatives, NOW, THEREFORE, BE IT

Resolved: That The American Legion, Department of Ohio, in duly convened convention at Columbia, Ohio, this 16th day of July, 1966, urges the Congress of the United States to enact into law such appropriate legislation as may be deemed necessary to control the practices of the Ku Klux Klan and related organizations.

The CHAIRMAN. Our first witness this morning is Mr. Harry Zerbe of Lawrenceburg, Indiana, prosecutor for the Seventh Judicial Circuit of Indiana.

Mr. Zerbe, we are pleased to have you with us, sir.

Mr. ZERBE. Thank you, sir.

STATEMENT OF HARRY ZERBE, PROSECUTOR FOR THE SEVENTH JUDICIAL CIRCUIT OF INDIANA

Mr. ZERBE. I am Harry Zerbe, prosecutor for the Seventh Judicial Circuit of Indiana. My testimony will be brief. I will read you the statute under which we were able to act against the Ku Klux Klan in Indiana last November. I will give you a brief history of what happened there. I will then indicate some additions that I would like to suggest to H.R. 15678. Then if there are any questions I would be glad to try to answer them, if I can.

First of all, I will give you the history. Last November I was informed by a newspaperman in Indianapolis by phone call that the Klan had issued a news release to his paper, to the Associated Press, to the Louisville newspapers, I believe, and to the Cincinnati newspapers—we are very close to Cincinnati, about 25 miles.

The CHAIRMAN. Do you remember what the tenor of the news relase was?

Mr. ZERBE. Yes, sir; I can read it to you. I have it in my application for restraining order.

The CHAIRMAN. All right.

Mr. ZERBE. The top of it read, "Rally Time, Knights of the Ku Klux Klan. Time, November 6, 1965, Saturday, 10 a.m. to 10 p.m.; November 7, 1965, Sunday, 10 a.m. to 3 p.m.":

> Take Highway 50 to Highway 262. Go south on 262 to rally grounds. 40 miles west of Cincinnati, Ohio; 70 miles south of Indianapolis, Indiana; 40 miles south of Richmond, Indiana; 50 miles north of Louisville, Kentucky.
>
> Every white Christian American is urged to attend last of your rally. It is important to have a large crowd for we will have speakers from Ohio and Georgia. The cross burning will follow speaking Saturday night. Let's have a group of men to help build the cross Saturday afternoon. There will be souvenirs, coffee and pop for sale. No alcoholic beverage, Communists, Niggers or Beatniks are allowed on the rally grounds.

That was the end of the press release.

The CHAIRMAN. Who signed it or who put it out?

Mr. ZERBE. Parkie Scott, rally organizer.

The CHAIRMAN. Where is he from?

Mr. ZERBE. Oregonia, Ohio. He is a farmer up there, I believe.

The CHAIRMAN. Do you know, did he identify himself as a Klansman?

Mr. ZERBE. No.

The CHAIRMAN. He is the one who issued the press release?

Mr. ZERBE. Yes, sir.

The CHAIRMAN. Did he name the unit that he was purporting to speak for? I will tell you why, sir. With all the protestations of pro-Americanism and anticommunism of these Klansmen, they operate under fronts—just like the Communists do—that are just as phony as a 2-foot yardstick and just as false as a $3 bill.

Now he didn't have the guts to say what Klan or Klavern he belonged to, if he did, in that ad?

Mr. ZERBE. In that ad he did not, sir.

The CHAIRMAN. And he would not, I suppose, say it today, and that is the way they operate. They are a hit-and-run bunch of people, just hit and run.

Mr. ZERBE. He has made it a matter of record in the Federal Court for the Southern District of Indiana to identify himself as a member. He has sued me and our attorney general and two other prosecutors. He has since, but that time he did not.

The CHAIRMAN. I see. How did he identify himself, as an official? Do you know?

Mr. ZERBE. I don't believe he identified himself at the rally site.

The CHAIRMAN. Did he name who the Klansmen from Georgia would be?

Mr. ZERBE. Yes, sir, he said Reverend Hill and Mr. Venable would be there.

The CHAIRMAN. That is Mr. Venable?

Mr. ZERBE. Yes, sir.

The CHAIRMAN. Well, do you know that Brother Venable testified before our subcommittee in executive session and in public session, and it was quite interesting to see his performance.

Mr. ZERBE. I would expect so.

The CHAIRMAN. By the way, this bird Scott was also a witness before our committee, and with regard to his own Klan association he invoked the fifth amendment. As I mentioned yesterday not one witness, and we had 187 of them, had the courage or, in American slang, guts, to come and say, "I have taken an oath that I would stick by the Klan and under that oath I will not speak because I believe in klanism, I believe in keeping my word; I have given my word that I will keep matters secret."

They didn't rely on their oath; they took refuge under the good old fifth amendment that they bellyache so much about because they say only the Communists take refuge under the fifth amendment.

Let me say as far as I am concerned, as a lawyer and as a Member of Congress and as chairman of this committee, I completely respect the right of any person to invoke the privilege of the fifth amendment, be he a witness before a grand jury, a petit jury, a Communist, Klansman, or anybody else. But whereas they for years and years and years used to sneer at the Communists for operating under fronts, the Klansmen do just that. Whereas for years and years they used to say that the Communists were cowards to invoke the fifth amendment and not to speak forthrightly about Americanism, they did the same thing, 187 of them. Not a one had the guts to speak out in defense of the Klan.

I told them, every one that seemed to have an education, "Look, you have a good education, I would like for you to tell me while you are under oath what is good about klanism, I would like really to put it on record; if there is anything good about it, I would like to know about it. Please don't let this record of 4,000 pages be barren of any good being said about klanism because I know after you leave this witness stand you are going to go out"—like some folks yesterday—"and lambaste this committee and call us all kinds of names. Now while you are under oath why don't you speak out and say what is good about klanism?"

Not one of them would do it. Yesterday again we had the same kind of performance. Here we had a situation where a professor of a great university, in this Capital of our great country, the Capital of the world, almost, in terms of leadership and democratic processes, knowing that I had invited him and everybody else to come and to

testify for or against this bill, knowing all about it, yet they called a press conference and I understand that professor even went so far as to say that even if my bill had some good in it, it should not pass.

Do you know why? That is how much they hate this committee.

Before this so-called press conference yesterday, I invited the good professor: "Okay, you want to talk against this committee, this is a free country, have at it. You want to talk against this bill, this is a free country, have at it. Take the stand right now if you can stand the cross-examination."

You know he ran out like a dog with his tail between his legs, and we have not heard from him. That is the way they operate. They hit and run. Klan agitators and Klan performers, they operate in the same method.

Mr. ZERBE. Thank you, sir.

The reporter asked me what I thought about the 1947 Racketeering Against Hate Act that Indiana has applied. This was in the evening about 9 o'clock, and I told him I would have to go down to my office and see because I had not looked at it. One has very little occasion to use this particular type of legislation.

So I did. I determined after looking at it that it did apply and that I would ask for a restraining order, using this. At this time I will read the pertinent parts of the act.

It is Burns, Indiana Statutes, commencing at 10–904, this particular section defining the public policy of the State:

Protection of people—Hatred—Race, color and/or religion.—It is hereby declared to be the public policy of the state of Indiana and of this act [§§ 10–904—10–914] to protect the economic welfare, health, peace, domestic tranquillity, morals, property rights and interests of the state of Indiana and the people thereof, to protect the civil rights and liberties of the people, to effectuate the Bill of Rights, to prevent racketeering in hatred and to prohibit persons from agreeing, combining, uniting, confederating, conspiring, organizing, associating or assembling for the purpose of creating, advocating, spreading or disseminating hatred by reason of race, color or religion.

Section 10–905. This is the central section about which we operated:

Association for propagation of malicious hatred—Malicious dissemination causing or threatening to cause disorder—Both unlawful by reason of race, color or religion.—(A) It shall be unlawful for any person or persons to combine, unite, confederate, conspire, organize or associate with any other person or persons for the purpose of creating, advocating, spreading or disseminating malicious hatred by reason of race, color, or religion not prohibited by law, for or against any person, persons or group of persons, individually or collectively, not alien enemies of the United States.

(B) It shall be unlawful for any person or persons acting with malice to create, advocate, spread, or disseminate hatred for or against any person, persons or group of persons, individually or collectively, by reason of race, color or religion which threatens to, tends to, or causes riot, disorder, interference with traffic upon the streets or public highways, destruction of property, breach of peace, violence, or denial of civil or constitutional rights.

10–906. Racketeering in hatred—Penalty.—Any person violating any of the provisions of section 2 [§ 10–905] of this act shall be deemed guilty of racketeering and hatred, and upon conviction, shall be disfranchised and rendered incapable of holding any office of profit or trust for any determinant period not exceeding ten [10] years, and shall be fined in any sum not exceeding ten thousand dollars [$10,000], to which may be added imprisonment in the state prison for any determinant period not exceeding two [2] years.

10–907. Restraint of crime on relation of prosecuting attorney or attorney-general—Contempt for violation.—Any of the acts prohibited by section 2 [§ 10–905] may be restrained and enjoined by any court having equitable jurisdiction in an action brought by the state of Indiana either on the relation of any prose-

cuting attorney of any judicial circuit or the attorney-general of Indiana. The state either on the relation of any such prosecuting attorney or the attorney-general may bring proper actions for contempt of court for the violation of any restraining order or injunction.

Just for the record, there are two more sections having to do with corporations, and so on, which I will not read in the interest of saving time. Those sections are 10–908 and 10–909.

Now this was written in 1947 right after World War II. I have not been able to discover why it was called racketeering and hatred particularly, but I do know that Indiana had felt the disgrace of the Klan as few States did because Mr. Stephenson, you will remember, was headquartered in Indianapolis and just about ran the State for a good number of years.

Also I think that after Hitler's acts of genocide against the Jewish people, perhaps the first legislature meeting after that time wanted to do something in Indiana that would protect the civil rights of colored people, Jewish people, and other minority groups.

After I determined that the act did apply in my opinion, I applied for a restraining order. I won't read that, but I will have one to put in the record, a copy of it. It was granted by Judge Baker.

The CHAIRMAN. You mean against holding of a meeting, or against what?

Mr. ZERBE. Against the holding of the meeting and using the section I read into the record there was reference of restraining orders. This was the *State of Indiana, ex rel. Harry L. Zerbe, Prosecutor of the Seventh Judicial Circuit of Indiana as plaintiff* versus *The Ku Klux Klan and Parkie Scott, rally organizer, as representative of the Ku Klux Klan, and Ben Davis, Dillsboro, Indiana, as representative of the Ku Klux Klan, unincorporated.*

In other words, as a lawyer you understand we had to bring a class action, and the complaint contains all of the necessary elements of a class action and all of the classical elements of an injunction action in the civil courts.

The CHAIRMAN. What happened to the action?

Mr. ZERBE. The action was eventually dismissed by me as being a moot question.

The CHAIRMAN. I see.

Mr. ZERBE. What actually happened was that the Klan took the attitude, as Mr. Scott did and Mr. Venable, that this was clearly unconstitutional; they didn't have to pay any attention to the court. My attitude was that it was constitutional until or unless an appellate tribunal said otherwise. Besides, I did have a chance to read a little bit of law and felt it was not unconstitutional. I felt it was a valid piece of legislation and within the police powers of the State. I have a one-horse operation down there, there was just me.

The CHAIRMAN. I say you are a mighty fast horse; you moved efficiently and with rapidity.

Mr. ZERBE. Thank you.

The CHAIRMAN. Congratulations.

Mr. ZERBE. They showed up, and as the plaintiff of this action I had to be there too. As my judge said, "I bet your legs grew a few feathers while you were out there," and they did. They are a rather frightening bunch of people.

They showed up about 10 o'clock in the morning and, of course, there were more newspapermen and television men and radio men there than there were Klansmen. There were a few curiosity seekers. I think maybe we had 25 people show up for this. They just gathered there, there were no speeches made. And I could not make a determination that they were meeting in violation of the law until they did something.

About 4:30 a late model Cadillac from Pennsylvania showed up with a great big character in there who came on to the rally grounds singing a filthy song to the tune of the Battle Hymn of the Republic, about s.b.'s father was a member of the NAACP and his mother was a dirty Jew. I don't remember the exact words, except it was very offensive to all of us there. He got in the trunk of his car, got out a robe and a hood and put it on. His wife and another man were with him. The wife started playing a guitar and the man started playing the drums. We determined the rally had started, and I went back to the courthouse to draw up attachment papers for contempt of court. While I was gone, and I can only figure that this was by design, Mr. Venable showed up—he is really the one I would have liked to have put in jail—and made a statement.

The CHAIRMAN. You had a profitable afternoon.

Mr. ZERBE. Yes, sir. He made a statement, which a young lady reporter from one of the Indianapolis TV stations took down on tape and I was able to hear it; that he was a lawyer and they were going to respect the order of the court and they were not going to have their rally there, they were going to leave, and he was going to tell everybody to leave because he thought since it was a valid court order here the Klan, being law-abiding people, would not do anything about it.

My own opinion of that was that had we not stuck to our guns and not stayed there and not shown a little bit of determination that they would have held their rally. We were prepared with the State police to have a tape recorder there and draw indictments under the criminal section of this had they stayed and made inflammatory speeches of any kind.

I might add that the State police did a remarkable job of keeping order. We had no disturbance at all. As a matter of fact, it was even humorous at times.

One character, they all had Confederate flags, little ones, and this fellow smoked long cigars and he didn't want to have his picture taken by the reporters there so he was walking toward them and burned a hole right in the middle of the flag with the cigar, which made quite a nice television story.

Two men were jailed for contempt of court, found guilty of contempt of court, and fined and released by the judge with the statement that he thought that they were ignorant tools of the bigger people in the Klan, which I think they were. I think had Mr. Venable gotten in jail in Dearborn County he would not have gotten out so quickly or so inexpensively.

That, in substance, is what happened using the 1947 Indiana Act. Subsequent to that time an injunction action was filed against me and the attorney general and two other prosecutors.

The CHAIRMAN. By whom?

Mr. ZERBE. By Parkie Scott, James Venable, and the National Knights of the Ku Klux Klan, a corporation. It is not a corporation in Indiana, but in Federal court I guess it does not have to be.

I am the lawyer for these other three people and Mr. Brand was a successor prosecutor to the prosecutor who took this or called the grand jury to look into Shelton's outfit up in Greenfield and no indictment was reached. Tom Roemer, the prosecutor in South Bend, where Notre Dame is, filed an affidavit. We operate by information in Indiana usually rather than by grand jury.

The indictment was quashed by a superior court, which is one of the lesser courts in Indiana, for unconstitutional vagueness. Of course that is not a binding precedent on any circuit court. At present, I think we have a good case. I am confident that we will win this, but that would be getting into something I think that is beyond the interest of this committee because it is not finished yet.

Now with reference to H.R. 15678 which Mr. McNamara sent to me, I am persuaded that it is a thoughtful presentation and one that whoever prepared it must have read the cases on this subject.

The CHAIRMAN. We have an able staff of attorneys. We have read and analyzed every State statute on the subject generally, including your own; all court, State and Federal law and higher, decisions.

We read them all and we think that despite the protestations of some groups—and that is all right with me, let them rant; like Brother Rauh yesterday, let them talk—we will get this bill out of this subcommittee unanimously. Every action since I have been chairman of this committee has been by unanimous vote. We will get it out of this subcommittee, this bill, probably next week. I don't want to pinpoint the exact time, but we will get it out to the full Committee on Un-American Activities and we will get it out of the House, we will have a record vote, and except for a handful of stragglers it will be approved during this session of Congress.

Mr. ZERBE. I have some suggestions, but I might say parenthetically that "I am with you, I am not agin you."

The CHAIRMAN. Thank you.

Mr. ZERBE. Under "Findings of Fact" I would add a number 6. That would be on page 3, about line 4. A further finding that, "There is a clear and inevitable causal relationship between the dissemination of literature and utterances, either written or spoken, which ferment hatred or tend to ferment hatred because of their race, religion, or national origins and acts of violence, threatened violence, and intimidation which effectively deprive the members of such groups of their civil rights."

I would add that.

Then under (c) of "Prohibited Acts," this would be on page 6 at line 5:

"Any person or persons who cause or conspire to cause to be published or mailed, written or printed cards, notices, news articles, letters, circulars, books, or advertisements, of any kind, disseminating malicious hatred against any individual or group of individuals by reason of the individual or group of individuals race, religion, or national origin, which gives information directly or indirectly, or when materials or orations disseminating such malicious hatred may be obtained or attended, shall be fined not more than $5,000 or imprisoned not more than five years or both."

Then under "Injunctive Relief" I would like this to be considered.

The CHAIRMAN. It will be considered but let me say this: Section 407 of our bill makes unlawful the teaching, advising, or advocacy of the duty, necessity, desirability, or propriety by the use of violence, force, intimidation, and so on.

Now your Indiana statute that you read and your proposal to amend this bill would reach talking about in meetings, or advocacy or orating, on the subject of hate. If I would put such language in this bill, groups such as Mr. Rauh's and those who had that press conference yesterday would hang me in effigy; I know that. However, my basic position on this question is consistent with that of a gentleman who ought to have the respect of everyone in America, including those of the groups I mentioned, and his name is that spunky and courageous former President of ours, Harry Truman.

Now his committee on civil rights advised and counseled against laws seeking to curb advocacy of hate, and I agree because that would probably in their opinion, and in mine, run counter in some fashion anyway to first amendment rights. So we have deliberately not attempted to do that, but with that law coming from the Legislature of Indiana you got by with it without too much trouble or criticism.

If I would advocate it in a bill, chances are I would be hung in effigy because they have particular hate for this committee, although our functions were the subject of inquiry by a special committee of the American Bar Association which said, in one of their reports, that this committee respects in every respect the rights of witnesses appearing before the committee. And our functions and duties and our legislative endeavors as well as our investigative techniques have been upheld by every court of the land, including the Supreme Court of the United States, many times.

I refer especially to the Barenblatt decision where the Supreme Court, I forget the exact language but this is 99 per cent correct, said that this committee had pervasive jurisdiction in the field of subversive activities and upheld our procedures completely.

Now you hear so much about a sentence in one of these decisions about exposure for the sake of exposure. Let me say what that decision was all about. The Supreme Court never did hold that this committee was engaged in exposing for the sake of exposure, they never held that. You can read the decisions of the Supreme Court. If you quote any language to that effect—they spout all these allegations on the floor of the House—and I have the piece of paper that contains that language.

What the Court said was that *if* we did and *if* any committee should advocate exposure for the sake of exposure that that would be bad procedure. There is no holding that we do, anywhere.

On the contrary, they said we had pervasive jurisdiction to do exactly what we are doing and they approved it in that case.

By the way, in another famous case, *Douds* v. *American Communications Association*, the Supreme Court came right out and said that conspiracy is not a civil right. We reach conspiracy in all of its forms, especially in its subversive aspects, by this committee.

But I repeat that this committee would not go as far as you suggest. I would not personally recommend, for example, that we adopt your suggestion that we put in this bill a provision to the effect that it shall be unlawful and made a Federal offense for persons to assemble and

preach and advocate hate. As cheap and as truly common as hate is, I would respect the recommendations of the Truman committee and avoid entering that field.

Now it is okay for you, let's say the legislature, to do it. I respect your right to do it. I would never recommend that this committee do it because from where I sit I could be a pretty lonely target for pot-shots from many angles if I undertook to curb the haters, as vicious and as heinous and as outrageous as I think they are.

Mr. ZERBE. Mr. Chairman, my suggestion is, for instance, that I may not stand up in a crowded theater and shout "fire." I feel—from reading the cases—I can understand how lonely a target you would be if you would adopt this.

The CHAIRMAN. I don't mind being a target.

Mr. ZERBE. The idea here, I was fired at a little bit by the Civil Liberties Union in my State and they used the term "prior restraint." I read the cases on that, and this is not a magical phrase, this may be done where the public good is involved.

The CHAIRMAN. Right.

Mr. ZERBE. And this is my opinion.

Now with reference to "Injunctive Relief," I had that tied to section (c) which was the one I proposed you would add but I will read it anyway, it is very short:

"Any person may institute a civil action seeking to enjoin any meeting advertised in violation of item 'c' of the 'Prohibited Acts' in the Federal court of the district of the designated meeting place."

I will still suggest that perhaps any person, as in a taxpayer's suit, for instance might enforce this.

The CHAIRMAN. We appreciate your suggestions.

Mr. ZERBE. All right.

Now there is one other thing I want to point out although I think whoever researched this bill probably read the cases.

This is from paragraph 5, page 13, of my brief in support of my motion to dismiss and motion to strike in the lawsuit of *Parkie Scott* versus *Harry Zerbe, et al.* This is a declaratory judgment action in the U.S. District Court, Indianapolis Division, Southern District of Indiana (No. 1P–66–C–242), seeking a declaratory judgment by a three-judge U.S. district court that the Indiana so-called antihate statute is unconstitutional. This suit is now pending.

The conduct plaintiffs alleged the desire to perform is to assemble peaceably. It is evident from the face of the complaint that the desire to assemble is the holding of rallies of the Ku Klux Klan. That is the activity from which they were restrained in the Dearborn Circuit Court and a complaint filed by defendant Zerbe. The Supreme Court of the United States in 1928 decided that a State may require some associations having an oath-bound membership to file a sworn copy of their constitutions, oaths of membership, and lists of members and officers while exempting labor unions and certain fraternal organizations. Not only did the Supreme Court decide that two types of associations with oath-bound members were involved and that the State could distinguish between them without denying equal potential under the fourth amendment but it took judicial notice that the Ku Klux Klan and its members were guilty of that "hard core" conduct which would be prohibited under any construction of the Indiana statute.

The CHAIRMAN. We are familiar with that.

Mr. ZERBE. That is *New York ex rel. Bryant* versus *Zimmerman*,

later followed by *NAACP* versus *Alabama ex rel. Patterson*, 357 U.S. 449, a 1958 case.

The reason I say that, I think whoever prepared your bill read that as they have some judicial notice language in there.

Now, if I may, I would like to question just one or two things and then I will be finished. I wonder what if the Klan would decide to say, "All right, we are the Ku Klux Klan and you can have our oath of membership, we will furnish it to you, you can have a list of our members and our officers."

The CHAIRMAN. Let me say this right now: We don't require that. I would be against that. I would be against this committee—and we have a wealth of information—publishing a list of known Klan members.

Mr. ZERBE. No, sir.

The CHAIRMAN. I will tell you why I am against such publishing, and we have a wealth of names of known Communist members. Let me give you two or three reasons why.

You know, sometimes it has happened to me, perhaps in my younger days but perhaps even in my older days. You might go into a certain place, you walk in, you get in there and you say, "Oh, my gosh, how in the devil did I get in this place; let me get out of here, this doesn't look good." You may not like the atmosphere. Well, you have some people, some Klan members, yes, some Communists, who walk into the lodge or into the atmosphere and they say, "Oh, what the devil did I do, how did I get involved in this thing?" They are in and then they get out.

If we would publish independently, or require by statute the publication of, all Klan members' or Communist members' names you would run against this situation In every city of maybe 10,000 or more, you would have many people with the same name, and when you come to the cities like Los Angeles and New York and Chicago it might run into hundreds of duplicate names. For instance, my name is Ed Willis. There may be in this town another Ed Willis in that telephone book, I don't know, but I would not be surprised.

Now if we would require the publication of Klan names you would run the risk of injuring non-Klan members with the same names. That would be wrong.

Then, too, you have people who just get in and out. That would be wrong because once you have such a list, years from now some will say, "Oh, look at the official list." The sins of the father would be descended upon his sons, perhaps even to the third generation. "Look, so and so is a son of a former member of the Klan," even if it was just an indiscreet act of in-and-out, like a person entering and getting out of a certain place that he might go into and then regret that he was in there.

Then, too, what would you do about these great dedicated American citizens who, at the risk of their lives—and how serious that risk is—joined the Communist Party; and people from the South—not in my district, thank God, there are no Klansmen in my district—people in the South, let's say, who joined the Klans and who take the oath; all those who go through the ritual of being Communists and Klansmen, having an abhorrence of the ideologies and being against them as a matter of ideology, but who do it for the good of their Government as undercover agents of the FBI and perhaps even as employees or representatives of other agencies. What are you going to do, publish their names? You can't do that.

Mr. ZERBE. No, sir; that is not what I suggested.

The CHAIRMAN. No, sir; for the reasons I have stated I am against indiscriminate publication of the names of Communists as well as Klansmen, and that, by the way, is the operation and the feeling of the FBI and the CIA and all other sensible agencies of our Government.

Mr. ZERBE. That is really not what I meant. The way I read this it must be a clandestine organization and there must be a criminal conspiracy. What I was about to suggest was not that you publish anything that you have learned that might hurt somebody for all of the reasons that you stated, which I respect, but supposing the Klan or associated organizations would start operating more openly. They could voluntarily for instance send to a newspaper, "Here is a list of our members; we are not ashamed of being Klansmen, here is a copy of our oath."

The CHAIRMAN. I invited them to do it, 187 witnesses. I said a while ago, "Why don't you say something good about the Klan?" They don't have the guts to even do that and they won't do it, don't worry about that. We invited them in, and now invite them in. Despite the fact that the Communist Party pretends that they are a party, they are not the kind of party that we are as Democrats and Republicans.

If they want to be, why don't they act like a party, why don't they come out in the open and publish and make public what they belong to and what it is all about. They can't stand and don't want the mighty light of merciless publicity that a man such as a public official must be subjected to every day. We have to live in a bird cage or in a fish bowl; our lives are public, our finances, our operations, our conflicts of interest, our very thoughts are aired, but not so with them. They can't stand that.

Mr. CLAWSON. Mr. Chairman, I would like to hear his point.

The CHAIRMAN. I appreciate your idea, really.

Proceed.

Mr. ZERBE. My point is this: Supposing the Klan would do something to lose its clandestine character and still do what they are doing, have rallies and stir up malicious hatred, deprive colored people or Jewish people, or whatever, of their civil rights, all the time maintaining that, well, this is the way we feel, there is nothing clandestine about what we are doing.

The way I read it, if they are not clandestine then your bill would fail, then your punishment would fail. Isn't clandestine part of the element of the crime?

The CHAIRMAN. They say they are not but they are, and we can prove it.

Mr. ZERBE. See, I want this to work very much. It just looks to me, from reading it, that if they would operate in the open that there would not be anything here to prohibit them from saying or conspiring to do anything unless there was an actual overt act, and I think the bill ought to go further than that.

The CHAIRMAN. And say what? Not in specific language but describe it.

Mr. ZERBE. Well, then we get back to my section (c) which you think is too tough.

The CHAIRMAN. Yes.

Mr. ZERBE. I certainly think that what I have suggested is within the police powers.

The CHAIRMAN. Your section (c) you say that you punish even orating on hate, how would you prove that they believe in hate? How could you prove that they hated? How could you prove their condi- the Zimmerman case and the NAACP case later, and also because of proof than is required under my bill.

Please don't misunderstand me. I appreciate your idea.

Mr. ZERBE. All right. Now I don't think that this would be too much of a difficulty in a civil proceeding for an injunction because of the Zimmerman case and the NAACP case later, and also because of the judicial notice that the court would take of the kind of activity the Klan is guilty of.

Now, in a criminal case, this would be a question of fact for a jury—did what the man said amount to something that is going to incite riot and deprive people of their civil rights?

Now I am pretty sure from what I have read that it is constitutional. Now it might not be wise and it might just bring hell down on this committee.

The CHAIRMAN. I appreciate your suggestion.

Mr. ZERBE. This is a possibility.

The CHAIRMAN. I always like to have considered thoughts made a part of our record, and that will be very carefully considered.

Mr. ZERBE. Well, that is really all I have unless there are some more questions from anybody.

Well, if there are not let me just say in conclusion, then, that I consider it a great honor to have been asked to come here and to be allowed about 60 minutes of this busy committee's time. Thank you very much.

Mr. CLAWSON. Before you leave, may I ask one quick question. If they were operating completely in the open and the clandestine nature was eliminated, aren't there laws today on the record—state, local, or national—that perhaps would cover that kind of an activity if they were inciting to riot or violence?

Mr. ZERBE. There is in my State. I have not noted too much comparative legislation. Ohio has had this problem. Mr. Parkie Scott went over there, you know, to hold his rally after we would not let him. And the sheriff of Warren County is getting pretty fed up with this, but there is nothing he can do. Then they passed the law that said you were not allowed to go to a meeting with a hood on, which impresses me as kind of silly. I think Ohio should have gone further than that. He arrested a few, and Parkie Scott threw rocks at his car and everything else. Parkie has been charged now with interfering with an officer in the Warren County Common Pleas Court in Ohio and is to appear on September 12, which date I remember because that is my birthday; otherwise I would not.

Mr. CLAWSON. What will the kids do at the Halloween party?

Mr. ZERBE. As I said, I thought it was silly, too, Congressman, but that is what they did. I think our law, considering the fact that it was written almost 20 years ago, was an excellent job and the thoughtful kind of legislation that we have learned to expect from the Indiana Legislature. They over the years have done an excellent job.

Mr. CLAWSON. You have been able to accomplish what you thought was necessary.

Mr. ZERBE. Of course, the Klan didn't really start, you know, they were pretty well disgraced in Indiana when Mr. Stephenson went to

jail, and there was not much heard from them until I think it was the 1954 decision of the Supreme Court on desegregation of schools and this started up again. The area of Ohio and Kentucky that this particular group seems to operate, that I had my problem with, is real close by and they thought they would extend, so to speak, in Indiana. We were able to stop them.

As I say, we are in the Federal court now on whether we are right or not, and we think we are because of Zimmerman.

The CHAIRMAN. Well, we certainly appreciate your attendance.

Mr. ZERBE. Thank you.

The CHAIRMAN. We will give deep consideration to your suggestion.

Mr. ZERBE. Thank you, sir.

The CHAIRMAN. Now our next witness is Mr. Lawrence Speiser, director of the Washington office of the American Civil Liberties Union.

Mr. Speiser, we are glad to have you, sir.

STATEMENT OF LAWRENCE SPEISER, DIRECTOR FOR THE WASHINGTON OFFICE OF THE AMERICAN CIVIL LIBERTIES UNION

Mr. SPEISER. I am Lawrence Speiser, the director of the Washington office of the American Civil Liberties Union, a private nonpartisan, nonprofit organization which devotes its entire resources to the protection of the Bill of Rights.

We know that freedom cannot flourish in a society where crime and racism are unchecked. However, we are equally convinced that the Government in its efforts to rout these evils, should not use self-defeating methods which undercut constitutional rights in order to achieve a desired goal. Shortcuts taken around constitutional freedoms protected by the due process clause and other provisions of the Bill of Rights would weaken, rather than strengthen, the democratic structure which we seek to build and maintain.

PROVISIONS OF THE BILL

H.R. 15678 would add a Title IV to the Internal Security Act of 1950, to be known as the "Organizational Conspiracies Act of 1966." This bill is the result of the hearings this committee held into the Ku Klux Klan and proposes to make it a crime:

1. For any member of defined "clandestine organizations" to travel in interstate commerce or use the mails with the intent to commit or promote, manage or facilitate any crime of violence. (Sec. 404)

2. For any member or agent of such organizations to harm, kill, or obstruct or impede any person who is moving in interstate commerce. (Secs. 405, 406)

3. To teach or advocate the duty, necessity, desirability, or propriety, by the use of violence, force, intimidation or any unlawful means, the furthering of any of the purposes of any "clandestine organization" or the depriving of U.S. citizens of any constitutional or legal right. (Sec. 407)

4. To use a radio or telephone by a member of any "clandestine organization" with the intent to aid any person in the commission of, or concealment of, any offense against the United States or to prevent detection or arrest for any offense. (Sec. 408)

5. To give or take an oath or pledge by a member of a "clandestine organization" to conceal knowledge of any offense against the United States, past, present or future. (Sec. 409)

Lastly, it authorizes the Attorney General to seek an injunction against any "criminal conspiracy" when he has reasonable grounds to believe a member is engaging in or is about to engage in any unlawful act or any act of violence, intimidation, or harassment, that injures, oppresses, or punishes any citizen in the free exercise of a constitutional or lawful right.

The bill defines a "clandestine organization" as any organization which (a) conceals its name, activities, or membership, or (b) whose members are required to keep their membership secret, or (c) whose members take an oath of secrecy, and (d) whose meetings are secret or guarded against intrusion by persons not associated with the organization. (Sec. 403(4))

The bill defines "criminal conspiracy" as any organization (a) which advocates, teaches, or employs, or (b) which within the 3 years prior to the filing of an action or proceeding for injunctive relief has engaged in, or (c) whose leaders, officers or members, in furtherance of a plan of the organization, have participated in or aided, or (d) have applied resources in aid of the commission of acts of violence, intimidation or harassment, to coerce any citizen "to do or not do any act or thing or to engage in or refrain from engaging in any course of conduct to conform with any purpose, objective or plan of such organization." (Sec. 403(5))

We believe the "clandestine organization" sections violate due process in being vague and indefinite and infringe on freedom of association.

The definitions of those who come under the bill and the acts prohibited are so broad and all encompassing, that pefectly legitimate organizations and actions would be made unlawful under this bill.

The CHAIRMAN. What for instance?

Mr. SPEISER. I have specified them in here and if I may continue with my statement I will get to them, Mr. Chairman.

The CHAIRMAN. All right.

Mr. SPEISER. Statutes which are so vague and indefinite are unconstitutional because, "No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes . . . . [A] statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law." *Lanzetta* v. *New Jersey*, 306 U.S. 451 (1938) at 453.

The criteria for being an illegal "clandestine organization" are a concealed membership list, *or* the urging or instruction of members to conceal their membership *or* the taking of an oath to maintain secrecy *and* the holding of meetings guarded against intrusion by outsiders. (Sec. 403(4))

It should be noted that these factors are alternatives with the exception of the last, so that any one factor plus the holding of meetings which bars outsiders is sufficient.

The term "organization" is defined as any group or combination of persons "associated for joint action on *any* subject or subjects" and includes two persons "acting in concert to perform *any* act."

Under these definitions, the following organizations would be considered "clandestine":

1. Democratic Study Group of House of Representatives
2. College fraternities and sororities
3. Masons
4. John Birch Society
5. Labor unions
6. NAACP. (See *NAACP* v. *Alabama*, 357 U.S. 449 (1958) in which the Supreme Court held the NAACP had a right to conceal its membership lists in Alabama; *Bates* v. *Little Rock*, 361 U.S. 516 (1960) similarly in Little Rock, Arkansas, and *Louisiana* v. *NAACP*, 366 U.S. 243 (1961), similarly in Louisiana.)
7. Knights of Pythias
8. C.I.A.
9. Office of Naval Intelligence
10. National Defense Agency.

This table of horrors is not farfetched because there is absolutely no requirement of illegal purposes for an organization to be encompassed within the definitions.

Section 405 covering certain acts of violence by members of such organizations merely requires that they be "acting in furtherance of *or in relation* to *any* purpose, objective or plan of such organization." That hardly is a requirement of specific intent or even general intent.

Therefore, this bill would, for example, make it a Federal crime subject to a 5-year prison sentence and/or $5000 fine for any member of those organizations I have listed to assault any person moving in interstate commerce. (Sec. 405(d))

Section 406, it is clear, could be used against labor unions. It provides that any member of a clandestine organization "acting in furtherance of or in relation to any purpose, objective or plan of such organization wilfully by force, *intimidation* or *threat* unlawfully obstructs or impedes the free movement of any citizen in interstate commerce." Strikes do often impede the movements of people in interstate commerce.

"Intimidations" or "threats" in this bill are nowhere limited to *physical* intimidation or threats *of force or violence*. Being unlimited, they could encompass economic boycotts, including even those by groups which threaten store owners with economic ruin if they persist in selling goods made in Communist countries.

In short, this bill penalizes individuals because they are members of so-called "clandestine organizations" with heavier penalties than they would bear if they did not belong. Such a law infringes on freedom of association protected by the first amendment, since, under such a blackjack, many people will be afraid to join any organization. (See Fellman, *The Constitutional Right of Association*, 1963.)

THE PUNISHMENT OF TEACHING AND ADVOCACY IN THIS BILL VIOLATES THE FIRST AMENDMENT

Section 407 makes it a crime, subject to 10 years and/or $10,000 fine, for any person to teach, advise, or advocate the duty, necessity, desirability or propriety by the use of violence, force, intimidation or any unlawful means, of (1) furthering any objective or plan of any clan-

destine organization in interstate commerce *or* (2) preventing or hindering any citizen of the United States from freely exercising or enjoying any right, liberty, privilege or immunity granted by the Constitution and laws of the United States.

I should point out in what ways this section is not limited:

(a) It is not limited to advocacy of force, but includes mere advocacy of intimidation and nonviolent unlawful means.

(b) It is not limited to incitement of immediate action but encompasses mere discussion of abstract doctrine—a form of advocacy—and, therefore, runs afoul of the line the Supreme Court has drawn between protected and unprotected speech. *Yates* v. *United States*, 354 U.S. 298 (1957).

The CHAIRMAN. Did you hear the colloquy that we do not intend to reach, and this bill does not reach, such things as the advocacy of hate, as reprehensible as that may be?

Mr. SPEISER. I heard part of the colloquy, Mr. Chairman, and even though that may be the intent of the chairman, unless that is spelled out, it seems to me that this bill could be applied in that fashion.

The CHAIRMAN. Have you completed your statement?

Mr. SPEISER. No.

(c) It is not limited to members of clandestine organizations, which presumably was the purpose of this bill.

(d) It is not limited to furthering only illegal plans of "clandestine organizations," but encompasses legal plans or objectives.

The following persons would be encompassed within the provisions of section 407 on the teaching of advocacy:

1. Any police officer or law enforcement official who advocates or teaches the propriety or desirability of interrograting any individual without informing him of his constitutional rights.

2. Any real estate broker who advocates the propriety or desirability of refusing to show an apartment to a Negro in violating of the proposed fair housing title of the Administration civil rights bill.

3. Any business owner who advocates or teaches the propriety or desirability of not hiring or promoting employees without regard to race in violation of Title VII of the Civil Rights Act of 1964—the Federal equal employment opportunities act.

4. It would encompass any Congressman who advocates the propriety or desirability of religious prayers in public schools.

5. It would encompass any Congressman, school official or any citizen who advocates the propriety or desirability of maintaining segregated public school systems anywhere in the United States.

We believe the Injunctive Relief section violates the due process clause and the first amendment.

Section 412 provides that the Attorney General may apply for an injunction against any "criminal conspiracy" whenever he has reasonable grounds to believe that it is engaging in or is about to engage in (1) any act which is unlawful under the laws of the United States, or (2) the commission of any act of violence, intimidation, or harassment that injures, oppresses, or punishes any citizen in the free exercise of any constitutional or legal right, liberty, privilege, or immunity.

A "criminal conspiracy" is defined in section 403(5) as *any* organization (a) which advocates, teaches, or employs *or* (b) which within 3 years of any proceeding against it has engaged in, or (c) whose lead-

ers have participated in, aided or encouraged, or (d) any part of its resources have been used in aid of or toward acts of violence, intimidation, or harassment for the purpose of coercing any citizen "to do or not do *any act* or *thing*, or to engage in or refrain from engaging in any course of conduct, to conform with *any purpose*, objective, or plan of such organization."

Here again it should be noted in what ways the definition of "criminal conspiracy" is *not* limited:

(a) It is not limited to "clandestine organizations."

(b) It is not limited to organizations which advocate or teach or commit acts of violence; it includes organizations which advocate acts of nonviolent intimidation or harassment such as strikes or economic boycotts, or sit-ins.

(c) It is not limited to organizations which take any kind of action but encompasses those which only *advocate* harassment or intimidation. Therefore, the same free speech problem arises as the one involving section 407.

The following organizations and individuals would be subject to injunctive proceedings by the Attorney General:

1. Labor unions which call any strike, since any strike is bound to "oppress" an employer in the use of his property and business.

2. Civil rights organizations which conduct sit-ins in places of public accommodation where they have been refused service.

3. Real estate brokers who harass home owners to sell their homes on the grounds that a member of a minority race has moved into an area and allegedly has depressed property values.

Injunctions against criminal acts punishable by criminal contempt are fraught with danger. They eliminate grand jury indictments, preliminary hearings, trial by jury, presumption of innocence and the burden of proof on the Government that guilt must be proven beyond a reasonable doubt.

It is true the bill does provide for jury trials in the criminal contempt cases, in other than petty offenses, (Sec. 414(a)), but that is no more than is now required by the Supreme Court, *Cheff* v. *Schnackenberg*, 384 U.S. 373 (1966).

The bill also contains an immunity provision (Sec. 413). The ACLU considers any immunity law as unwise and unconstitutional because we believe that the privilege against self-incrimination should also include protection against self-degradation. While the courts today might not accept this view, we believe that the past rulings of judges of various courts should still apply, that people should be protected against giving self-degrading testimony.

Our democratic system is based on the concept of fairness and decent treatment of the individual, and the full power of Government should not be brought to bear to force a person to condemn himself by his own words. The fifth amendment protection against self-incrimination is rooted in the historical struggle of men to maintain their political beliefs despite Government efforts to force confessions which would result in criminal prosecutions.

USE OF TELEPHONE TO COMMIT OR CANCEL ANY OFFENSE

Section 408 bars the use of radio, wireless, or telephone by a member of a "clandestine organization" to commit or conceal any offense against

the United States. There need not be any proof that a crime was ever committed. Yet for using the telephone a person could receive a 5-year sentence and/or $5,000 fine. Considering the scope of the "clandestine organization" definition, it is clear this section could be misused most horrendously. "Any offense" is not even limited to felonies of violence, much less felonies. In fact, it could include the petty offense of "disorderly conduct" for which the usual fine is $10. Yet using the phone to aid in committing this offense or concealing it could result in sending a person to jail for 5 years.

There is also question of whether this provision violates the privilege against self-incrimination or would penalize the confidential relationship between an attorney and his client. It also should be obvious that passage of this provision would spur wiretapping activities.

OATH OR PLEDGE TO CONCEAL OFFENSE

Section 409 makes it a crime for any person, in relation to the activity of a clandestine organization, to give or take an oath or pledge to conceal from lawful authority of the United States any knowledge either may have or acquire of the commission of any offense by another member of said organization.

The same objections I raised concerning section 408 would also apply here. This section would violate the privilege against self-incrimination, the attorney-client privileges, right of free speech, and the due process clause in the punishment not fitting the crime—2 years for taking an oath.

This section could be used against the following:

1. A businessman who pledges not to reveal information about a business consolidation that may violate the antitrust laws.

2. A garageman who agrees not to inform traffic authorities of safety defects in automobiles he has worked on.

3. Real estate brokers who know of discrimination in the rental or sales of homes in the District of Columbia in violation of our fair housing regulation.

CONCLUSION

In light of the focus of attention on the administration's civil rights bill H.R. 14765 which has been reported out by the House Judiciary Committee, it is difficult to see either the necessity for or the justification for this bill. Fairly bristling with constitutional defects both in concept and in draftsmanship, it should not be considered further.

The American Civil Liberties Union urges that it not be reported.

The CHAIRMAN. Would you be for our bill if there was any good in it? As the good professor said yesterday, he would not. Would you?

Mr. SPEISER. I would be for a bill that to——

The CHAIRMAN. I mean a bill by this committee.

Mr. SPEISER. Yes.

The CHAIRMAN. All right.

Mr. SPEISER. I don't believe in guilt by association, Mr. Chairman.

The CHAIRMAN. Let me say this: I don't want to quarrel with you, but it is my impression that you would really gloat over it if we did have language in this bill which would indeed affect the NAACP

and which could, in fact, affect the Democratic Study Group of the House of Representatives and the other listings you have on page 3 of your statement. I have news for you, we do not intend to do it and I intend what I am now saying to be a part of the bill's legislative history.

Now you did quote and very fairly, I appreciate it, from a description of the acts made unlawful by the bill and you wound up with a disjunctive feature. Did you hear my colloquy with the Attorney General of the United States?

Mr. SPEISER. No, I did not.

The CHAIRMAN. And with the representatives of the NAACP and the representatives of ADL to the effect that I personally would look with favor on the addition of the following clause to a section 403(4) to the bill which would be another conjunctive in addition to another disjunctive. The clause would read, "And whose history, purpose, policies, or activities embrace the use of violence, threats, intimidation, or harassment in accomplishing any of its objectives."

Would that in any way improve your misgivings about the bill?

Mr. SPEISER. No, it would not, Mr. Chairman.

The CHAIRMAN. Well, it satisfied Emanuel Celler and there is no greater civil libertarian in this country, the chairman of the committee to which I belong, the Judiciary Committee. It satisfied the ADL representative, it satisfied Mr. Clarence Mitchell of the NAACP.

You mean to say that the addition of this language would not serve to alleviate some of your misgivings?

Mr. SPEISER. No, it would not, Mr. Chairman.

The CHAIRMAN. That is why I asked a while ago, and I ask again: Would you not feel even better if the bill were worse and did in fact and in terms of specificity seek to affect organizations such as the NAACP? Would you not gloat over it if we tried such a thing?

Mr. SPEISER. I don't think gloating has any place in the legislative process, Mr. Chairman.

The CHAIRMAN. I know it should not but I must say this, and what I am about to say I really don't want it to apply to you, but, in my opinion, inasmuch as what I have just said and the addition of this conjunctive clause did satisfy the fears of the chairman of the Judiciary Committee, the representative of ADL, and the representative of NAACP, I would say this, excluding you, that taking the position that this addition is not taken seriously as improving criticisms of the type you are leveling—I would say, please pardon me, that it takes a legal mind just about the size of a nit on the eyelash of a gnat to come to that conclusion.

Mr. SPEISER. Mr. Chairman, the bill has so many defects in it so that that would——

The CHAIRMAN. Oh, yes, I know. You claim here vagueness, lack of specificity. We have heard that from your organization from time immemorial, we expect to hear it again. Despite that, however, unlike you, sir, I would not put in this bill things that would reach the very matters that you talked about. I just said that a while ago to the previous witness. I agree with the Truman civil rights committee that this committee or this Congress should not go into the field of hate, or legislate on the right to preach hate, as heinous and reprehensible as it is, because I do not want any part of even coming close to violating

first amendment rights. I know you feel that way very deeply, and I applaud your attitude.

I wish, though, that when your association can find in its heart room to come to the rescue of the Ku Klux Klans when we investigate, as despicable as I know they are to you, if you can find room to come to their rescue and say we ought not to investigate them; if you can find room in your heart to find a place to come to the rescue of people who are brought to task, rightly or wrongly, in the field of subversion, I wish you could also find room to believe that some Members of Congress, even if they come from the South, don't want any part of passing any legislation which would reach the organizations of the type that you described on page 3 of your statement.

Mr. SPEISER. Mr. Chairman, let me be specific. If this committee had reported out Title V of the administration's civil rights bill we would have supported the legislation. You, Mr. Chairman, are on the House Judiciary Committee. And it has nothing to do with the sponsorship of the bill. The bill has the constitutional defects, I believe, I have mentioned in my testimony.

The CHAIRMAN. Well, may I say that it is my position that the civil rights bill is not an adequate anti-KKK measure. There are 16 sections in my bill, 5 of them do not figure in some comparison with the civil rights bill. These are the first three and the last two, which spell out the title, congressional findings, definitions and nonpreemption and separability of provisions sections that are more or less common to all bills.

That leaves 11 sections with which Title V must be compared to see which is the most effective anti-Klan instrument. Eight of these 11 spell out prohibited acts; namely, sections 404 to 411. Two others provide for injunctive relief and immunity, sections 412 and 413. One deals with criminal contempt, section 414.

How does Title V shape up against these 11 sections? The fact of the matter is that seven of these sections encompass matters that Title V does not touch at all, namely, sections 407 to 412 and section 414. That means there are only four sections in my bill, sections 404 to 406 and section 413 in which there is some overlapping with the Civil Rights Act.

Mr. SPEISER. But of the sections you have mentioned, Mr. Chairman, I pointed out that we are opposed to those sections. Even though you are right, they are not covered by the civil rights bill of the administration and we are opposed to them because of the constitutional reasons that I have raised. So it may be true that you are going beyond the administration's civil rights bill.

The CHAIRMAN. In my opinion my bill is broader than the civil rights bill. I illustrated that; I don't know if you heard, so I will illustrate again. In prosecutions under the Civil Rights Acts, including the bill now before the House, you need threshold proof of involvement in matters of race, religion, or national origin. You don't need that in my bill.

For instance suppose a Klansman would assault or murder a white atheist, you can't touch him under the civil rights bill. First, he does not have any religion; number two, he is a white man. And also with, let's say, an act of violence——

Mr. SPEISER. May I answer that one, Mr. Chairman?

The CHAIRMAN. Let's take a coldblooded murder. Under your bill you have to prove as a threshold question that that murder resulted or was surrounded with elements of race, color, creed, religion, or national origin; not so with my bill. Murder is murder, kidnapping is kidnapping, and a crime is a crime.

I say that my bill requires a much less burden of proof or less evidence to reach the crime than the civil rights bill and particularly with reference to KKK activities, which were the subject of as lengthy an investigation by this committee—I think you probably know at least as much, and I think you will recall this—as any other committee or group of individuals in the country.

Now I came out of these hearings with a firm conviction that the Ku Klux Klan operations and any terroristic operations are evil. And my bill is intended to provide the medicine that will cure the evil of threats and intimidation, violence, including assault, murder, and all the rest.

I think it will do the job.

Mr. SPEISER. Mr. Chairman, I am, just as you are, interested in eliminating the killings and the murder, the assaults, that have occurred by Ku Klux Klan members and by others. You have to be careful, as I am sure you are aware, that the medicine is not worse than the evil.

The CHAIRMAN. Let me agree with you. You know that people said there is no cure for cancer. Do you know that you can treat a cancer? You can inject an antiseptic so strong as to destroy not only the cancer, but the tissue. Now I don't want to apply what I know you have in mind, that is to apply something that will cut through and not only be a cure for the KKK but strike at constitutional rights. I don't want to do that. I reject that very thought.

Mr. SPEISER. I know you don't, Mr. Chairman, which is the reason I testified. This is the first time I have testified before this committee on a piece of legislation, and I took the time.

The CHAIRMAN. And I wish you could find it in your heart to say something good about one little iota of the bill.

Mr. SPEISER. Well, Mr. Chairman, you know that I think that your mandate is unconstitutional and you know that I believe the committee should not be in existence. I think you are asking me an unfair question.

The CHAIRMAN. I don't think that is unfair at all.

Mr. SPEISER. As far as you, Mr. Chairman, I have had respect for you because I have seen in hearings that you have in certain situations treated a witness fairly.

The CHAIRMAN. I appreciate that.

Mr. SPEISER. I think the whole concept of the committee is unfair. I think the kind of work the committee does is improper and unconstitutional. But as far as you, Mr. Chairman, I have seen you, with regard to clients I have represented, treat them in a fair fashion of how the committee is operating.

The CHAIRMAN. I appreciate that.

Mr. SPEISER. Let me go back to one of your initial statements about a Ku Klux Klan member killing a white atheist. I differ with you on whether Title V does cover that; it does. Atheism is covered by the atheism clause. I personally had a case before the Supreme Court.

The CHAIRMAN. Suppose they do not know he is an atheist?

Mr. SPEISER. The question is, What does the Ku Klux Klan think he is? He may have a view that a person who does not go to church is an atheist and kill him for that reason or hurt him for that reason, but as a factor that has to be proved under Title V.

Going back to your second example, it seems to me that you do have an additional problem in utilizing the criminal sections of your bill, and that is you have to prove some additional facts.

The CHAIRMAN. What?

Mr. SPEISER. Membership. You have to prove the factors of membership, the organization, what it does in each of the cases. You have to do that. You can't take judicial notice of that, that has to be proven. So you do have those additional factors to prove in a criminal case.

The CHAIRMAN. That presents no difficulty. I said a moment ago when the other witness was on the stand—and that may have surprised you but I now repeat it to you—that I would be opposed to the publication of a list of Klan members or Communist members. I would be opposed to that forever because that is the policy of this committee. It is the CIA's policy, the policy of the FBI, it is the policy of sensible security agencies, not to do that.

Mr. SPEISER. But even if you don't publish the list, the fact is——

The CHAIRMAN. Let me say this: Proving that Mr. X is a member of the Klan is no problem. Let me tell you, we do have a wealth of proof and let me tell you this, which makes the Klan even worse than I mentioned heretofore. This ought to make you believe that this committee was objective. You can't imagine the trouble we ran into in these investigative hearings, you can't imagine the innate fear and fright that has been instilled into the Klan membership deliberately so that they would keep their lips sealed. And you can't imagine the job it was to corkscrew it out of them in a constitutional way but we did.

As I said yesterday, the sweetest thing that the Attorney General said about me and the committee was that we cooperated with the Department of Justice, we respected the rights of individual witnesses, their constitutional rights as witnesses. And particularly in a perfect liaison between Katzenbach and myself as chairman did we handle with care the matter of not involving pending State and Federal criminal prosecutions in connection with these hearings; we didn't trample upon the rights of anybody. I am glad he said that. Nor did we lay the foundation for any claim of prejudice in these criminal prosecutions, which it might have been alleged we created through our public hearings. We knew about all of them: had the transcript and the indictments and the information and the benefit of all the evidence, and we were very careful to skirt that. Oh, I know, as I said, what would have happened if we hadn't.

I think perhaps some people might have wished, for instance, that I would have gone into the Penn case. Although I have the original confession in the Penn murder case, if I had gone forward and simply taken it on myself to put on the witness, then I know what would have happened. Perhaps there would have been an acquittal, and you know what would have been said. I was not born yesterday.

Some people would have wished I had been so that there could have been acquittal and they could say, "Oh, yes, Ed Willis, a southerner, he

deliberately did that in order to create prejudice and here we have another acquittal."

I was not born yesterday, I know what is in the minds of some people.

Mr. SPEISER. Mr. Chairman, let me go back to the factor of requiring proof of organizational membership in a prosecution. What you say I understand is correct. Members of the Klan are fearful of disclosing their membership unless you have an undercover agent and then his usefulness is ended, but you have an immunity provision to get around that. There was an example of how useless immunity situations were where individuals are fearful.

There was a man named Giancana in Chicago who was sent to jail because he refused to disclose information after he had been granted immunity under an immunity bill and finally he was released. The fact is that he was less fearful of going to jail with an immunity provision which stripped away the privilege against self-incrimination than he was fearful at that time of members of the Mafia. So even if you have an immunity provision, which as I indicated we are opposed to, that is still not the cure as far as getting the proof of the organizational membership, which is essential in a criminal prosecution under the act. I don't think you can minimize the difficulty you may very well have by requiring proof of organizational membership in order to have a successful prosecution plus the other objection to that kind of thing, which is that people are going to be fearful to join a wide range of organizations if they knew that they are going to be punished for a crime. They are going to have infinitely heavier penalties for what might be a simple assault in a State court which now becomes a Federal crime that is subject to 5-year imprisonment merely because they happen to be members of an organization with your very general kind of intent in there which is in relation to any purpose.

Mr. CLAWSON. Are you stating that membership in the organization comes under the purview of this bill?

Mr. SPEISER. That you have in the bill a statement of the person engaging in some course of conduct pursuant to or in relation to does not mean anything to me. I don't know what it means to the drafter of the bill but "in relation to" is not any proof of any specific or even general intent.

Mr. CLAWSON. You use the phrase, "in relation to," as applying to a member even though he may personally not engage in the activities?

Mr. SPEISER. I am not sure I understand your question, Mr. Clawson.

Mr. CLAWSON. I am trying to understand membership in the organization, because you keep talking about membership in the organization without individual participation.

Mr. SPEISER. If an individual does something, he is subject to a heavier penalty because he is a member. Now then you say, merely because he is a member? Well, you have some language which seems to indicate that the action that he takes is pursuant to an objective or plan or purpose of the organization or in relation to that. I don't know what "in relation to" means; it does not require any kind of specific intent. When you talk about a plan or a purpose, there is a wide range of organizations—nonviolent, nonsecret organizations who are very much in favor of keeping segregated schools.

For them, for an individual to go to a public meeting, for example, in which the question of desegregating schools comes up, may become so outraged that he hits somebody and all of a sudden, boom, he is under the provisions of this act.

Mr. CLAWSON. So the membership in the organization has nothing to do with it.

Mr. SPEISER. Yes; because membership then becomes a crucial factor as to whether he is subject to the act and the penalties under the act.

The CHAIRMAN. Well, I am glad you said what you just did; it clarifies things a little bit in my mind. I hope you mean it. I don't agree with you, however, in your conclusion.

By the way, you seem to applaud and you now take the cudgel in favor of persons who forthrightly advocate segregation. I thought you were opposed.

Mr. SPEISER. No, no. You misunderstand me, Mr. Chairman. I am just showing how broad this is. It could be applied to those people whose points of view I happen to disagree with.

The CHAIRMAN. Let me say that if we put fear in the Klan, if we curb the Klan, if we kill the effectiveness of the Klan, and we will, we will end most of the violence in the South, because most of the evil and danger comes from organized clandestine groups and not from individuals and I am for ruling that out.

I believe my bill does what I have in mind it will do and all I have said I want to become a part of the legislative history as to the coverage of our bill. We will have something to say in the report on the bill as to exactly what we mean and we will have some more to say on the floor of the House so that, if and when you or Mr. Rauh might attack it in the future, at least there will be no misunderstanding as to what the committee meant. If we missed the boat and miss our mark and don't in words carry out what we have in mind, I will take the blame, but at least we are trying to put in words what we have in our minds.

Sir, we do appreciate your attendance.

Mr. SPEISER. Thank you, Mr. Chairman.

The CHAIRMAN. This is our last witness and concludes the legislative hearings on the bills before us. However, the record will remain open for the submission of additional or further statements by anyone who so desires to through Monday of next week, July 25.

The committee therefore stands in recess.

(Whereupon, at 12 noon Friday, July 22, 1966, the subcommittee recessed, subject to the call of the Chair.)

STATEMENTS OF REPRESENTATIVES JOSEPH G. MINISH, OF NEW JERSEY; WILLIAM F. RYAN, OF NEW YORK; AND GEORGE F. SENNER, JR., OF ARIZONA; AND MORRIS B. ABRAM, PRESIDENT OF THE AMERICAN JEWISH COMMITTEE, AND PETE YOUNG

After the conclusion of the hearings, the following statements were submitted for inclusion in the record:

STATEMENT OF HON. JOSEPH G. MINISH, U.S. REPRESENTATIVE FROM NEW JERSEY

Mr. Chairman and Members of the Committee: I regret that hearings of the Banking and Currency Committee prevent my personally appearing in support

of H.R. 15744 and similar measures designed to punish and curb Klan-type terrorist activities.

The exhaustive hearings held by your committee gave the American people a much clearer and truer picture of this reprehensible organization than, I believe, was generally the case. Although most people have always been strongly opposed to the Klan, its organized terroristic activities were only vaguely realized until the civil rights murders and other criminal acts of the past few years. Our claim of civilization is indeed a sham when men and women are subject to the dastardly treatment that your probe so thoroughly exposed.

I fully agree with your committee that these terroristic activities must be dealt with by strong Federal action. The record so painstakingly compiled by your committee is eloquent proof of the urgent need for corrective measures. I am happy to associate myself with the committee's legislative recommendations, which are the result of long and thorough deliberation and which I feel will provide an effective deterrent to this evil.

The time is long past due to stamp out this evil and eradicate this criminal conspiracy. I respectfully urge that legislative action be taken at this session.

STATEMENT OF HON. WILLIAM F. RYAN, U.S. REPRESENTATIVE FROM NEW YORK

Mr. Chairman, I think that my principal objections to H.R. 15678 have been amply stated by some of the other witnesses who have testified before this committee, including the Attorney General, who used magnificent understatement in warning that "there are constitutional difficulties and problems with some aspects of the committee's bill."

This bill is designed to establish certain new categories of Federal criminal activity. Such legislation should properly be considered by the Judiciary Committee, which has jurisdiction over the Federal Criminal Code. The very fact that the Un-American Activities Committee is considering this legislation is, in my judgment, further evidence that the committee should not exist.

The proper forum for such a bill is the Judiciary Committee, which produced the infinitely more carefully drafted criminal provisions of the civil rights bill, H.R. 14765, which will be considered on the floor next week.

Mr. Chairman, H.R. 15678, as drafted, is impossibly vague. It forbids many activities of "clandestine organizations," but it leaves the nature of such organizations open to speculation. Any group which holds any "secret" meeting or any "meetings which are guarded or secured against intrusion by persons not associated with it" may be considered a "clandestine organization." So would any organization which "conceals * * * its * * * membership." By that definition, not only would the CIA and fraternal organizations qualify as clandestine organizations, as has been pointed out, but so would the Democratic Study Group of the House of Representatives.

Nor does the bill give any clear indication of what acts are prohibited. Most strikingly, it forbids the advocacy of any act which would further "any purpose, objective, or plan of any clandestine organization"—if "violence, force, intimidation, or any unlawful means" are used to accomplish that end. What constitutes force? What constitutes intimidation? Are economic boycotts forbidden? Is picketing illegal?

Mr. Chairman, this House should not produce legislation which is so vague that it could be used to attack a wide variety of groups for a number of activities which Congress did not intend to forbid. Such legislation might well be held unconstitutional. It would certainly be irresponsible and dangerous.

Furthermore, by punishing anyone who "teaches, advises, or advocates the duty, necessity, desirability, or propriety by the use of violence, force, intimidation, or any unlawful means, of (1) furthering or accomplishing any purpose * * * of any clandestine organization," this bill would clearly abridge the freedom of speech which is protected by the first amendment. It ignores the fundamental distinction between advocacy of abstract doctrine—which is protected under the first amendment—and the use of inciting language—which is not. This distinction was made clear in *Yates* v. *United States*, 354 U.S. 298 (1957).

I am surprised that the chairman of this committee, the author of this bill, should be supporting a bill which has the "vice of vagueness" in view of his objections to the criminal provisions of H.R. 14765, the new civil rights bill. H.R. 14765 is far more carefully drafted and describes precisely those activities

which are to be protected by Federal law. In the minority views which he joined in presenting, it was asserted that "Title V makes criminal such undefined action as 'intimidation,' 'interference,' and 'attempts to interfere.' These provisions contain the vice of vagueness in violation of due process and may, as now worded, violate the freedom of speech guaranteed in the first amendment."

Mr. Chairman, I oppose this legislation.

STATEMENT OF HON. GEORGE F. SENNER, JR., U.S. REPRESENTATIVE FROM ARIZONA

I very much regret that I could not be in Washington when hearings were held on these bills so that I could personally testify for them.

It is my view that H.R. 15678 should be enacted and that those who oppose enactment have missed the full picture of the situation we face and the nature and purpose of H.R. 15678.

A number of witnesses have argued that the civil rights bill of 1966 is a better vehicle for obtaining the ends desired. I do not agree. I have voted for all previous civil rights bills. I intend to vote for the civil rights bill of 1966. I am for civil rights. I believe additional civil rights legislation is needed.

As the chairman pointed out in his opening statement, however, H.R. 15678 and its companion bills are not civil rights bills. It is, therefore, a mistake to view these bills and the civil rights bill in the same light. If we do this, using civil rights as the criterion, we will find H.R. 15678 deficient. On the other hand, if we look at the 1966 civil rights bill, H.R. 14765, as an anti-Klan or antiterror organization bill—which it is not—we will find the civil rights bill deficient.

The two bills have different purposes and scope. The enactment of one, therefore, will not make unnecessary or undesirable the enactment of the other. Their provisions and intent are such that they are not mutually exclusive. I believe both should be enacted.

The principal reason why I urge enactment of H.R. 15678 is the fact that we have no Federal law aimed at clandestine organizations which undertake campaigns of terrorism and violence against American citizens because the citizens disagree with, refuse to follow, or oppose, the views of the terror group in the economic, political, social, religious, or other areas.

It is my view that such terrorist action is clearly unconstitutional and that it is, in addition, highly destructive of our democratic process and a clear threat to all the rights of all American citizens. This is true no matter what the nature of the terror group. Ramming one's views down the throats of other persons by organized campaigns of force, violence, and intimidation is incompatible with the principles of our Government and society. We need legislation which is specifically designed to outlaw such activity.

I believe that H.R. 15678 will do that.

It would be a shame in my view if, after all the effort and money that was expended in the Committee on Un-American Activities' investigation of the Klans and in view of the facts uncovered in that investigation, no legislation should be enacted to cure the specific problem pointed up in the committee's hearings and to see that neither the Klan nor any other terror group could in the future do so much violence to our principles, traditions, and way of life. The civil rights bill is not designed to do this.

A number of witnesses have claimed that the definition of clandestine organizations contained in the bill is so broad that it is possible that members of bona fide secret organizations might be prosecuted under its provisions. This is true only if one reads Section 403 in isolation, completely divorced from all other sections of the bill and its legislative history. As the Attorney General indicated in his July 20 testimony, it would be improper to do this. Section 402 of the bill makes it obvious that there is no intent to embrace within the bill's provisions any bona fide secret fraternal, civil rights or similar groups.

Nevertheless, to ease the concern that has been exhibited in this area, I believe it would be advisable for the committee to narrow the definition of clandestine organization, if this can be done without destroying the bill's effectiveness.

We must keep in mind the fact that the committee's investigation of the Klans was undertaken—and approved by the House—on the principle that Klan operations and organized terror of any kind "attacks the principle of the form of government as guaranteed by our Constitution."

It was also authorized with the understanding that when its investigation was completed the committee would recommend legislation to deal with Klan-type terror. The simple truth is that the civil rights bill of 1966 does not do this.

Though, as I have indicated, I support the civil rights bill, it is not intended to be an antiterror organization bill and it, therefore, fails to meet the problem of organized terrorism in a number of respects. The civil rights bill does not cover all forms of organized terrorism. It does not cover all possible victims of organized terrorism. It is limited in its scope to violations of nine specified rights and then, as respects those rights, it requires proof that the violation stemmed from racial, religious, or national origin motivation.

As our distinguished chairman pointed out in the hearings, there is some overlapping of crimes covered by the civil rights bill in three sections of his bill. We could debate endlessly about which of the two bills would make for easier prosecution of a violator in these areas. I see no point in doing so. In one case, H.R. 15678 might make for easier prosecution; in another case, the civil rights bill, H.R. 14765. Why not, then, have both of them available?

More important, for the reasons I have just indicated, H.R. 15678 and its companion bills, in at least half-a-dozen other areas, cover crimes which the civil rights bill does not reach at all. Obviously, we should have every possible constitutional weapon to deal with organized terrorism. In this area, the bills before the Committee on Un-American Activities give us much more than does the civil rights bill. For this reason, I hope the committee will favorably report H.R. 15678.

STATEMENT OF MORRIS B. ABRAM, PRESIDENT OF THE AMERICAN JEWISH COMMITTEE

The American Jewish Committee, a national organization with chapters and units in more than 50 cities and with membership in over 600 additional communities in the United States, was organized in 1906 and incorporated by a Special Act of the Legislature of the State of New York in 1911.

For sixty years, it has been a fundamental tenet of the American Jewish Committee that the welfare and security of Jews are inseparably linked to the welfare of all Americans, whatever their racial, religious or ethnic background may be. Today, it has become a tenet of national purpose that true equality be extended to all our citizens. None stated this national policy more clearly and emphatically than Lyndon B. Johnson, in his address at Howard University in June of last year:

". . . it is not enough to open the gates of opportunity. All our citizens must have the ability to walk through these gates.

"This is the next and the more profound state of the battle for civil rights. We seek not just freedom but opportunity—not just legal equity but human ability—not just equality as a right and a theory, but equality as a fact and result."

The organizations under investigation by this committee and their predecessors have been a major source of intimidation, violence and deprivation of constitutional rights for nearly 100 years. They have openly pursued a course of criminal conduct as if they were immune from the law. And if we face squarely up to the facts, we must conclude that at least a tacit immunity has been operative. The time is long overdue that laws be enacted to control and punish these elements.

I fully recognize that, under the Constitution, the Judicial, the Executive and the Legislative branches have different and distinctive roles in the administration of justice—roles which must not be confused. The Executive cannot enforce policy, nor can the courts judge upon conduct except that their enforcement and judgment be based upon law established by the Constitution and legislation.

Much of the difficulty in controlling violence against Negroes and civil rights workers has been a result of the woeful lack of comprehensive and strictly enforced federal legislation. I therefore am most gratified that a committee of Congress is now considering this much-needed legislation to protect indisputable and indispensable American rights.

However, just as the Judicial and Executive Branches cannot function without appropriate legislation which they may not themselves enact, so too is the Congress limited to its coordinate role of legislation to the exclusion of any judicial or executive function.

As a lawyer, I am keenly aware of the absolute necessity of gathering all relevant facts as a basis for any effective legislation, and I welcome these hearings as a means of preparing for legislation. However, I must add that beyond this purpose these hearings do not, in my opinion, have any other proper and defensible function.

My statement, therefore, is not aimed at challenging anyone's rights to associations permitted by the Constitution, however objectionable those associations may be to me; not even to question anyone's beliefs or prejudices, however repugnant they may be to me, for under our system a citizen is not accountable to any branch of his government for his associations or prejudices. Nor is my purpose to create conditions of confrontation before this committee which would be to cause any man—even one whose views I despise—to commit a violation of the law. I submit this statement solely to propose legislation to deal with criminal acts—especially as they relate to victims who are active in the civil rights field.

It is my hope that through recommendations growing out of these hearings, Congress will make new laws which will give meaningful protection to citizens engaged in pursuits protected by the Constitution and set penalties for those who violate these rights.

The Problem

The problem we face is a grisly one. Basically it is this: In certain portions of our nation—particularly in the South, if you choose the right victim you can literally get away with murder, let alone arson, bombings, assault and lesser crimes.

Let me cite just a few typical recent examples:

In April, 1963, northern integrationist W. L. Moore was slain in Alabama while walking to Mississippi with a letter for Governor Ross Barnett.

On June 12, 1963, NAACP Field Secretary for Mississippi, Medgar Evers, was shot in the back by a sniper in front of his home.

In June, 1964, the three young civil rights workers, Michael Schwerner, Andrew Goodman and James Chaney, disappeared in Neshoba County, Miss. The lurid details of their brutal slaying shocked our nation and fed anti-U.S. propaganda around the world.

On July 11, 1964, Reserve Colonel L. A. Penn of Washington, D.C. was murdered while driving through Georgia on his way home from a tour of duty at Fort Benning.

On March 8, 1965, the Rev. James Reeb, having just arrived to aid the civil rights drive in Selma, Ala., was beaten to death on a city street.

On March 25, 1965, Mrs. Viola Liuzzo was shot to death after participating in the Selma to Montgomery March while driving on U.S. Highway 80.

On August 20, 1965, the Rev. Jonathan Daniels was shot to death by Tom Coleman in Lowdes County, Alabama. Mr. Coleman was acquitted.

The only sentences to grow out of these crimes were the ten-year terms given the three men found guilty of violating Mrs. Liuzzo's civil rights, and two men found guilty of violating Mr. Penn's.

Some killings in the South still take the form traditionally characterized as lynching. While recently these crimes have been few, Tuskegee Institute records 4,729 lynchings between 1882 and 1950. Of these, eight-tenths of one percent were followed by convictions.[1]

The problem posed by the almost 5,000 lynchings and the recent killings is differentiated only by quantity, not by quality. All have this in common: they are acts of terror, unchecked by law enforcement authorities—in some cases even initiated or assisted by them—and this atmosphere is very much with us in 1966.

Let me turn for a moment to some other acts of terror. According to the Council of Federated Organizations (COFO) which has compiled statistics in the civil rights field, between June 21 and October 21, 1964, 35 Negro churches were burned and 31 homes and other buildings were bombed in Mississippi.

Our nation was shocked when four young Negro girls were killed by a bomb blast in a Birmingham church in September, 1963. Less newsworthy, but nevertheless significant, was the fact that this bombing was Birmingham's 21st in the last eight years—all directed at Negro churches and Negro leaders.

---

[1] Maslow and Robinson, "Civil Rights Legislation and the Fight for Equality 1862–1952," 20 Chicago L. Rev. 363 (1953) at p. 383.

In the light—or should I more appropriately say darkness—of these statistics and examples, it becomes abundantly clear that immediate action is imperative to protect all our people in the free exercise of their rights as citizens of the United States.

The Inadequacies in State Administration of Criminal Law

Murder is, of course, a crime in every state. Lynching is also a crime in 18 states, including seven in the South.[2] But in spite of existing state statutes, murder committed within the context of the civil rights struggle usually goes unpunished.

Maintenance of law and order has been basically a state responsibility since our nation was established. There is no national police force; murder is almost never a federal crime. The statistics show, however, that some states have not fulfilled their police power obligations.

Law enforcement reflects the prevailing community sentiment in the selection of police, whose duty it is to apprehend; attorneys whose duty it is to prosecute; judges who preside at trials; and juries who can make the final and irrevocable decisions not to indict and not to convict the defendant.

The effect of community feeling on law is one of the indelible memories of my childhood. When I was a youngster in Fitzgerald, Ben Hill County, Georgia, interested in becoming a lawyer, I used to go to the local courthouse to watch the trials. Outside the courthouse, and inside, I saw the symbols of equal justice chiselled in stone and etched in wood. But I was always aware—even as a child—that these fine words had very little to do with what went on in the courtroom.

The courtroom was segregated. The judge was elected by the white people only. No Negro served on any jury. Negro witnesses were referred to as "uncle" or "boy" or "girl" or "auntie," or by their first names—irrespective of their age. Never were courtesy titles used in addressing them, and racist arguments were more the rule than the exception.

There was no equal justice in that courthouse, nor was there due process of law as guaranteed by the Federal Constitution.

Is the situation much different today in many parts of the South? Not really.

The local and state police are answerable to elected officials and sheriffs, and prosecutors and judges are directly elected in most states. This system offers strong protection to the citizen, for he is also the voter. However, where minority groups are deprived of voting rights or the dominant political power enforces strong racist lines, the minority group is deprived of this protection and is at the mercy of the majority.

If the prevailing community opinion approves or even tolerates the deprivation of citizenship rights and lawlessness, the law enforcement and judicial systems must be ultimately contaminated, and certainly the jurors would be. Mr. Justice Holmes was focusing on the close ties between community sentiment and the enforcement of the criminal law when he wrote in *The Common Law* that effective criminal law must "correspond with the actual feelings and demands of the community, whether right or wrong."

In the case of civil rights violence, the feelings of the immediate community often justify or at least tolerate lawlessness. Therefore, unless the case is tried in a forum representing a more diverse community, effective criminal law enforcement is not possible in cases where racial passions are engaged. It must be remembered that while the Constitution permits the accused to demand a change of venue from a forum in which his rights could be prejudiced, it also requires that the accused "shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law. . . ." (Amendment VI, U.S. Constitution)

In a trial permeated by prejudice there cannot be hope for justice. A "speedy and public trial, by an impartial jury . . ." is a right accorded to every U.S. citizen and not a privilege. This right must be enforced and made meaningful throughout every State in our nation.

One way to meet this problem would be to extend a federal forum to aggrieved persons who have been injured, oppressed or intimidated for reasons of their race, or because they were exercising, had exercised, or were attempt-

---

[2] Alabama, Georgia, Kentucky, North Carolina, South Carolina, Tennessee, Virginia.

ing to exercise the rights and privileges secured to them by the Constitution and laws of the United States. To this end, original jurisdiction in cases of violation of civil rights—and in overt acts of criminality associated with these violations—could rest with the federal district courts. But even this would not be enough. In order to pose a viable alternative to state inaction, existing federal laws need to be enforced; present legislation must be amended where necessary to effectuate constitutional safeguards; and new legislation must be enacted in order to meet the requirements of justice in an area of federal responsibility.

The Federal Court System—A More Neutral Forum

By its very nature, the federal court system is a more neutral judicial arbiter. Neither United States attorneys, nor judges are elected or subject to removal by the community in which they serve. In addition, a federal jury is chosen from a judicial district comprising several state judicial districts, which state districts are drawn along county lines. For example: The Jackson division of the Federal Southern District of Mississippi includes eight counties of which Neshoba County is only one. Thus, a federal courtroom could not be affected to the same degree with the passion or prejudice of those within close proximity to a crime. Secondly, those coming to serve as jurors in the federal courts bring to their task an amalgam of viewpoints and experience which can serve to elevate the quality of a trial from that of a state court—particularly a provincial one.

It should be axiomatic—morally and legally—that the Federal Government protect what it grants—let alone what it encourages. At issue here, besides protection of human life, is the supremacy of national law; the meaning and guarantees of national citizenship; and the vigorous affirmation of national commitment.

Claims by United States citizens to such Federal protection were recognized as early as the Reconstruction Period, when Sections 241 and 242 of Chapter 18 of the U.S. Code were enacted.

In recent months the Supreme Court has given new vitality to these sections, while strongly suggesting that Congress make use of its power to legislate for the protection of individuals engaged in the civil rights struggle[3]—powers granted to it by § 5 of the 14th Amendment itself. Although the practical effect of the decisions is minimal, the possibilities clearly opened for federal legislation in this area give promise for all those who have waited for the federal government to protect the rights which our government holds out to all citizens.

Section 241

Section 241 states that it shall be a crime "if two or more persons conspire to injure, oppress, threaten or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States. . . ."

Whereas § 241, the conspiracy section, had traditionally been thought to include only that conduct which interfered with those federal rights arising from the substantive powers of the federal government, such as the right to vote in a federal election, the Supreme Court has now revealed that § 241 reaches conspiracies to deprive any citizen of any rights or privileges secured, confirmed or guaranteed by the Constitution—or laws of the United States—including the Due Process and Equal Protection Clauses of the 14th Amendment. However salutory this may be, it does not begin to make this section adequate to the task of reaching and adequately punishing conspiracies designed to thwart U.S. citizens of the enjoyment of their rights and privileges.

The most obvious limitation on the employment of Section 241 is the requirement of the existence of a conspiracy. Conspiracies require agreements, and criminal agreements are hard to prove.

In the area of civil remedies, just as in those regarding criminal penalties, it should be made clear that there need be no proof of specific intent to deprive the plaintiff-victim of constitutional rights in order to bring about liability for clear violations of civil rights. That intent should be presumed.

Section 241 has still another lack: it provides a maximum penalty of but a $5,000 fine or ten years imprisonment, or both. *Since murder could be and often is involved in the violation of this Section, the maximum punishment provided is ludicrous.*

[3] *U.S.* v. *Price et al.*, U.S. (1966) : *U.S.* v. *Guest et al.*, U.S. (1966).

Section 242

Companion to Section 241 is Section 242 which provides:

"Whoever, under color of any law . . . subjects any inhabitant of any state . . . to the deprivation of any rights, privileges or immunities secured or protected by the Constitution or laws of the United States . . . shall be fined not more than $1,000 or imprisoned not more than one year or both."

Whereas § 242 had traditionally been thought to cover actions of only those persons acting "under color of" law, presumably agents of the state, under the most recent Supreme Court interpretations, it is clear that where private persons join with state officials in committing proscribed acts, their actions fall within this statute.[4] Thus, even where the necessary component of state action can be best described as minimal, or peripheral, an indictment for a violation of § 242 will stand as against private individuals. The required component of state action has been broadened therefore, to include within the ambit of § 242 those private persons who are willful participants in joint activity with the state or its agents. However, whether a conviction will lie under § 242 is still a question of intention.

The constitutional problems arising from the ambiguous definition of the crime are similar to those which pertain to Section 241. In addition, Section 242 could not be applied against a Georgia sheriff who, with the help of two assistants, beat a handcuffed Negro prisoner to death while taking him to jail, unless the jury found that the sheriff willfully attempted to deprive the victim of his constitutional rights—the right to a fair trial. Under the doctrine of the *Screws* case, a jury, finding that the sheriff had the will merely to kill the prisoner and no desire to deprive the victim of his constitutional rights, could not convict. This doctrine still stands.

Finally, the penalty provisions of this Section are ridiculous. A man can be convicted of murder for the purpose of depriving a fellow citizen of his civil rights and receive a $1,000 fine and/or one year in jail—the same punishment prescribed for injuring a tree on public land (18 U.S.C. § 1843).

To sum up: For all practical purposes, Federal law does not operate in this area. Those on the books are too ineffectual or ambiguous to be applied, and even if they were applied, the punishment is less than salutory. What is needed is an escalating scale of penalties to meet the nature of the crime committed, as a meaningful alternative to state and local inaction or indifference to bringing known criminals to justice.

Accordingly, the broad suggestion by the Court in its pronouncements that Congress legislate in this area must be swiftly acted upon.

A New Approach to Federal Legislation

Uniformity and efficiency are not among the hallmarks of dual state-federal systems of criminal law. It is in the nature of such a system that some criminals may escape who, in a centralized state might have been apprehended and punished. On balance, however, Americans are not only satisfied with the division of police power between state and federal governments, but are determined to avoid the dangers of centralization, even if they must forego some of the efficiency of a national police. However, there can be no valid objection to the full use of the federal constitutional power to enact criminal law adequate to the protection and defense of federal rights.

Each citizen of every state is first a citizen of the United States. The Federal system is today being weakened by the helplessness of the Federal Government to deter and prosecute violence against United States citizens acting under Federal laws. The test for any extension of the Federal criminal law should be whether it is needed in order to protect federal rights. Is there any doubt that this is the case today?

There is equally no doubt that Congress has the power to correct the imperfect work of the Reconstruction Period draftsmen, and to provide punishments commensurate with the deeds. Section 5 of the Fourteenth Amendment grants to Congress the power to enforce that Amendment by appropriate legislation. That this power exists was again made manifest by the recent Supreme Court decisions in *Price* and *Guest*.

It is time that we took appropriate steps to punish criminal activities according to their nature. There can be no doubt that it lies within the power of the

[4] *U.S.* v. *Guest et al.*, supra.

federal government to devise a system whereby crimes which are motivated for reasons of race, or because the victim was exercising a constitutional right, can be tried in the federal court system. At this moment crimes such as assault or even murder, are punished under federal statutes only by indirection.

It is time to face squarely the fact that the victim of these crimes is deprived of more than his freedom of speech or assembly, to give but two examples, but in some cases his very life. The criminal should be punished accordingly. We are not now talking about the common garden-variety of assault when a civil rights leader is attacked by a mob, and the time has come to recognize the palpable distinction between the two.

Why do we continue to strain to find a conspiracy or a component of state action before these offenses can come under federal cognizance? Recent decisions of the Supreme Court and a reading of Sec. 5, Amendment XIV suggest that adherence to the time-worn formulas is misplaced. If rights are to have true meaning, they must be guaranteed by the federal government to the full extent of its authority. There is not a right without a remedy, and citizens who undertake lawful activities while in fear of their lives cannot be said to enjoy the free exercise of rights.

New federal legislation should enforce the sweep of the Fourteenth Amendment by making it a federal crime to interfere with the exercise of all rights guaranteed by it. Such action is in the spirit of recent decisions of the Supreme Court in upholding the Civil Rights Act of 1964 which opened up new possibilities for federal protection of individual rights, and in vindicating the powers of the federal government to enforce Fourteenth Amendment rights.

In addition, by expanding the application of the interstate commerce power of Congress, the federal government would be capable of punishing acts of violence which impede the use of the highways by persons using them in pursuance of federally protected civil rights activities, travelling interstate, or on roads or highways constructed with federal assistance. As was broadly stated by the Supreme Court in the *Guest* case, "the federal commerce power authorizes Congress to legislate for the protection of individuals from violations of civil rights that impinge on their free movement in interstate commerce." Its suggestion should be speedily acted upon.

Moreover, by making the public employer liable for damages for the acts of its officers when they deprive persons of their civil rights, the federal government could exert pressure on the states to make certain that their officer's actions comply with constitutional requirements of due process. By stripping the governmental unit of the customary immunity flowing from sovereignty in instances where the officer acts without the scope of his authority or goes beyond his implied authority, it is to be expected that these units will exert their influence and power to insure prompt and strict compliance with constitutional standards.

Changing times require changing concepts to deal with the problems with which we are confronted. Our times require that we make explicit the rights of our citizens inherent in the concept of national citizenship, and extend those rights and federal protection to those rights of all our citizens.

As is clearly stated in the Fourteenth Amendment of the United States Constitution, Section 1., "All persons born or naturalized in the United States, and subject to jurisdiction thereof, are citizens of the United States and of the State wherein they reside." What this means, in broad terms, is that federal citizenship, and the federal system to which such citizenship attaches, is primary: citizenship of a particular state is merely derivative. Certainly it is past time that we recognized the essential nature of this citizenship and made it absolutely clear these rights include, but are not limited to:

1. The right to speak, write, assemble, petition, lawfully and peacefully march or demonstrate or otherwise publicize opinions.

2. The right to be free in one's person and property from physical and mental harm.

3. The right to form groups to discuss political issues and otherwise promote political activity on behalf of citizens of the United States.

4. The right to vote or register in any election in which public officers are to be elected or nominated, and the right to urge others to vote in such an election or to register to vote in such an election.

5. The right to use the public highways free from interference, coercion, intimidation, or injury to person or property.

6. The right to use and enjoy property, facilities, activities, or other generally extended privileges of the state or federal governments without discrimination on grounds of race, creed, color, national origin, or religion.

7. The right to testify before federal and state courts, agencies, legislative committees, grand juries and serve on juries without regard to race, color, creed or religion.

8. The right to a speedy and public trial in all criminal prosecutions; to be represented by counsel, and to have an impartial jury of one's peers.

9. The right to be protected against injury, oppression, coercion, intimidation and discrimination on the part of one who acts under color of law, statute, ordinance, regulation, or custom or usage enforced, required, established, fostered or encouraged by action of a state or any of its political subdivisions.

10. The right to be protected against injury, oppression, coercion, intimidation and discrimination on the part of one who uses the highways for racially or politically motivated ends where such action exerts a demonstrable effect on interstate commerce.

Yet another way would be to proscribe acts such as I have described when they are racially motivated. By this I mean the following: acts which were substantially motivated by hostility or objection to the race or supposed race of the victim, or to his conduct or reputed conduct because of his race, or the race of his associates, or his or their actual or reputed opinions on, or activities in racial matters.

By taking these steps, our Federal Government would do much to close the gap between constitutional guarantees of equality—political and social—and enforcement of these guarantees.

There is a federal responsibility to insure that due process prevails in the court system of every state in the Union. I do not have a ready suggestion for the means by which this right can be federally protected, but the power and responsibility certainly exist. [The only protection today is for a review of a trial itself in the federal judiciary. This is a limited type of protection, and because it frequently results in a reversal of an otherwise just decision, is one which potentially harms the state. It is a cumbersome and totally ineffective way of assuring minimum standards of due process.]

This *laissez faire* attitude toward state courts enhances lawlessness. There can be little doubt that Klan activity and mentality is encouraged by many of Southern court systems. Any person who has witnessed sessions in state courts in the South knows that their posture toward the Negro can only be justified by relegating him to citizenship in a separate nation. If the courts, presumably one of the most respected organs in a democratic society, treat Negroes as inferiors or in other discriminatory fashions, how can citizens be expected to do otherwise?

Without doubt we must expand statutory penalties for violations of civil rights within our federal court system. However, we must not, at the same time, abandon all hope for color-blind justice in those sections of our nation where its absence in state courts is flagrant and notorious. Too, if we merely turn our attention to the individual wrongdoer, and ignore the need to reform courts which have allowed him to operate criminally with relative impunity, we will be missing a vital link in ensuring all our citizens and their property against acts of violence directed or motivated against them, principally for reasons of race.

Much-needed reform, then, must also be aimed at spurring our Southern states toward maintaining court systems which truly offer equality under law for all.

For these reasons, among others, the American Jewish Committee supports the enactment of those portions of the proposed Civil Rights Act of 1966 which relate to the problem of securing equal justice under law for all citizens, with the amendments proposed thereto by Roy Wilkins on behalf of the Leadership Conference on Civil Rights, of which the American Jewish Committee is a cooperating organization.

Those suggested amendments which are relevant for the purposes of this Committee are:

1. The indemnification of all persons injured or killed due to their race or because of their efforts on behalf of civil rights;

2. The inclusion of an automatic triggering device for instituting procedures which would end jury discrimination in state courts where a pattern of discrimination is found to exist.

The bill includes, among its titles, an attempt to reform our federal criminal statutes in order to insure stronger and more effective criminal laws against those persons or organizations who would injure, coerce, or oppress persons who speak or work on behalf of the cause of racial justice. Secondly, it establishes procedures for jury selection in state and federal courts so that discrimination in them may be ended. Further, the bill aims to end civil rights violence by prohibiting interference with the exercise of constitutionally guaranteed rights by threat or force.

Titles I and II are an attempt to deal with the problems of systematic exclusion from jury service in both federal and state courts of numbers of our citizens for reasons of race, color, creed, sex or economic status. Its purpose is to insure that jurors are drawn from a broad cross-section of the community so that, among other things, persons who commit civil rights crimes will be tried by juries representative of the community in which the crime takes place.

In pursuance of this aim, there is established a jury commission for each federal judicial district, and the creation of a "master jury wheel" from which the names of prospective jurors are to be selected. Although the methods of insuring compliance differs as between Title I and II owing to traditional and constitutional limitations upon federal interference with state courts, the intent in both titles is clear—the putting to an end of discrimination in jury selection. It need not take extended inquiry to realize that if such were the case, men could not kill, injure, or terrorize their fellow citizens secure in the knowledge that like-minded, lily-white juries would acquit them.

If we are to move into an era wherein the rights of all our citizens are secure, we must insure that the administration of justice is color-blind, and that those who commit crimes for reasons of race are appropriately punished. Title V of the proposed Act, wherein constitutionally protected rights are specifically enumerated is an attempt to protect from interference all those who work or speak on behalf of the cause of civil rights—whether from private or public action. This enumeration makes clear that all our citizens are truly equal in every phase of their lives and that they are to be afforded relief from interference, intimidation, and violence by persons who would violate these rights in matters such as voting in an election, and buying a home; in attending public schools, and in serving on a jury. In other words, the generations-old patterns of white domination and Negro subservience found in many communities which has bred and nurtured the Klan mentality will now be broken.

By so doing, it utilizes Section 5 of the Fourteenth Amendment, as interpreted in the recent *Guest* decision wherein the Supreme Court stated that Congress had the power to reach purely private acts in violation of Fourteenth Amendment rights. Further it would correct the faults in Sections 241 and 242, discussed previously, which have stalled enforcement of the older civil rights statutes.

Granted, those provisions are but one step in the fight to secure equality and justice for all citizens. But they are a step in the right direction. In addition, the provisions of the proposed Civil Rights Protection Act of 1966 (H.R. 12807) promise to supplement and augment the Administration's bill. Reaching, as the bills do, overt acts of violence and intimidation as well as more overt forms of degradation, such as occur in discriminatory jury selection, there can be no doubt that if such legislation were enacted, we will have taken long strides toward eradicating the evils toward which the attention of this Committee has been drawn these long months.

Yet another approach to the eradication of Klan-type activities is contained in two identical bills introduced by members of this Committee—H.R. 15678 and H.R. 15789—introduced by Congressmen Willis and Weltner, respectively. Entitled the "Organizational Conspiracies Act of 1966," in broad outline the bills make punishable as federal crimes and prescribe varying penalties for various overt acts of violence and wrongdoing when committed by members or agents of "clandestine" organizations which are acting in furtherance of or in relation to any illicit purpose or plan of the organization or are persons who conspire with or solicit such persons, if the mails or interstate commerce are used in the commission of the crime. Included among the proscribed acts is the teaching, advising or advocacy of the use of unlawful means to prevent or hinder any U.S. citizen in the enjoyment of their constitutional rights. Further, those organizations whose members, officers or leaders employ or advocate acts of violence, intimidation or harassment, or whose resources are used in aid of such practices, among other acts, are deemed criminal conspiracies where

the object of the organization is to cause citizens to engage in or refrain from conduct which conforms with the plan, purpose, or objective of the organization.

These bills, in their attempt to curb the activities of the Klan and like-minded groups, particularly as respects the proscribing of various overt acts of violence, do not, unfortunately, conform to constitutional requirements.

As but one example, lawful organizations which hold meetings in secret or which conceal their memberships could be held liable under the provisions found in Sections 403(4) (A) and (D), and 503(4) (A) and (D) of the Willis and Weltner bills, respectively.

Further, Sections 403(5) and 503(5), respectively, fail properly to classify the proscribed objects of a criminal conspiracy so as to limit their application to those acts, the purpose of which is to prevent or hinder any citizen of the U.S. from freely exercising or enjoying any right, liberty, privilege, or immunity granted or secured to him by the Constitution and laws of the U.S.

But even if it were possible to amend the bills to insure that only such objects come within the purview of this type of legislation, there nevertheless still remain serious doubts, perhaps fatal defects, concerning the scope of these bills.

The entire experience of attempting to make the fact of a person's affiliations or his membership in a particular organization central to any effort aimed at controlling his overt actions has proved to be a most ineffectual one, as characterized by those cases dealing with the Communist Party. That experience has demonstrated abundantly that the most effective and constitutionally permissible way of proscribing particular forms of behavior by an individual or individuals deemed harmful to society is to reach those overt acts undertaken in pursuance of associational aims—without regard to the fact of association, *per se*.

This is, in fact, the scheme of the proposed Civil Rights Act of 1966. Although that bill aims to punish individual overt acts of violence and wrongdoing committed within the context of the civil rights struggle, there is no doubt that virtually all forms of concerted action will be brought within its purview. In the opinion of the American Jewish Committee, this is the constitutionally preferable manner in which to reach these acts. If one commits an *act* punishable by law, the fact that he did it as a member of an organization should be irrelevant for the purposes of meting out appropriate penalties.

In addition, although the American Jewish Committee is strongly of the view that these bills should be amended so as to include a qualification that the purpose of a proscribed criminal conspiracy would be the commission of acts which deny constitutional rights to others, as hereinbefore discussed, this alone would not be sufficient to insure that the nature and scope of these constitutional rights were fully understood. The best way of insuring that they are is to enumerate them specifically, as is done in Title V of the proposed Civil Rights Act of 1966. Unless this is done, a danger exists that, as has been the case in the interpretation of § 241, the scope of constitutionally protected rights will be unduly limited. Such a possibility cannot be permitted if the federal government is to fulfill its obligation to bring equality to all our citizens.

There exist, in addition, certain other defects in these bills. Sections 407 and 507 of the Willis and Weltner bills, respectively, prescribe the punishment of anyone who willfully "teaches, advises, or advocates the duty, necessity, desirability or propriety" of using "violence, force, intimidation or any unlawful means" to further "any purpose" of a "clandestine organization" or to deprive any citizens of federal rights. These sections ignore the distinction between the mere advocacy of abstract doctrine, which is protected by the First Amendment, and the use of inciting language, which is not.[5] As such, these sections as drafted constitute an abridgement of free speech. What is more, since the definition of a "clandestine organization" is so broad, there exists a clear possibility that under these sections an organization which committed a sit-in (which may be a technical trespass), or which does not disclose its membership lists, such as the NAACP, would have committed a federal crime. (Sections 403(4) and 503(4) of the Willis and Weltner bills, respectively.)

Finally, those provisions authorizing the issuance of an injunction against any "criminal conspiracy" or its members to restrain anticipated future crimes are questionably enforceable. (Sections 412 and 512 of the Willis and Weltner bills, respectively.) Under these sections, there is substituted an injunctive

[5] *Yates* v. *U.S.*, 354 U.S. 298 (1957); *Noto* v. *U.S.*, 367 U.S. 290 (1960).

process for criminal trials guaranteed by the Constitution, thereby subjecting those enjoined to summary proceedings for contempt of court in the event of a violation of the injunction. Those provisions, in Sections 414(a) and 515(a) respectively, providing for jury trial in the event of a *criminal* contempt cannot, in any meaningful manner, make up for the lack of a jury trial and traditional constitutional safeguards—absent in civil contempt proceedings—which will constitute the majority of cases.

Despite the good intentions of the framers of these bills, the American Jewish Committee hopes that this Committee will recommend the proposed Civil Rights Act of 1966 as an adequate and effective means of dealing with the type of overt behavior which these bills seek to reach. Even if these bills were tightened so as to conform to minimal constitutional standards, there would remain other, harmful defects: to wit, emphasis on associational ties; making a crime of teaching and advocacy; widespread use of the injunction and attendant civil contempt procedures in place of the criminal process.

For these reasons, the American Jewish Committee recommends as a sound alternative to curb civil rights crimes, the proposed Civil Rights Act of 1966 and the proposed Civil Rights Protection Act.

New federal laws governing this area alone will not bring on immediate and final conclusion to this sorry chapter in our nation's history. Statutes in and of themselves cannot, of course, eliminate bigotry and its ugly manifestations. However, they can give its victims the adequate weapons with which to redress wrongs.

Our statements of national purpose as embodied in our Constitution, the Civil Rights Acts, and the Voting Rights Act make this clearly a matter for immediate federal action. Our position as the leading practitioner and teacher of democracy in the world also demands this.

More than a century has passed since men died at the hands of their countrymen so that the stain of slavery would be lifted from our nation. We have abolished slavery, but we have yet to establish true equality. All Americans must blush for the existence of the mentality reflected in expressions by members of the Klan before this Committee.

The time has long since passed that we would be required to tolerate such racist attitudes and behavior. If, as President Johnson stated in his famed Howard University address, we are to "move beyond opportunity to achievement," to "shatter not only the barriers of law and public practice, but the walls which bound the condition of many by the color of his skin," we must begin today.

It is the hope of the American Jewish Committee that this Committee, as a result of its investigations and the testimony growing out of these hearings will see fit to recommend legislation to the Congress designed to abolish practices that are a source of national shame to us all. As was asserted so eloquently by President Johnson in his message to Congress on voting:

". . . rarely in any time does an issue lay bare the secret heart of America itself. Rarely are we met with a challenge, not to our growth or abundance, or our welfare or our security, but rather to the values and the purposes and the meaning of our beloved nation. There is no Negro problem. There is no Southern problem. There is no Northern problem. There is only an American problem."

STATEMENT OF PETE YOUNG

'WITHERED TREE: DISEASED FRUIT'

Mr. Chairman, Members of this Committee: I am entitled to guess that a proposal to investigate, then outlaw Klan-type organizations was conceived in the days and weeks after the November 1964 Election. At that time (but no longer) "The Klan" was the only major American group remaining outside the artificial consensus of an increasingly disturbed President. I am entitled further to guess that in early 1965 the brutal and cowardly murder of Mrs. Viola Liuzzo provided the necessary public incident to surface the investigation-outlawry proposal that was already in gestation.

Guessing games aside, what the record does show is that on the morning after the Liuzzo murder, the President of the United States appeared on national television and gave utterance to a threat that is (I believe) without precedent in the long history of this Republic. Said the President:

"Get out of the Klan and return, now, to decent society before it is too late."

I do not recall—perhaps Members of this Committee will refresh my memory—an American President saying:

"Get out of the Mafia and return, now, to decent society before it's too late."

"Get out the Communist Party and return, now, to decent society before it's too late."

"Get out of the Teamsters Union and return, now, to decent society before it's too late."

No, I do not recall language of that kind being directed at other groups. That kind of language was reserved for the men, women and children of "The Klan." And it was reserved for them because they are (in the main) low-income Southern whites, largely uneducated, economically exploited, officially harassed and lacking in the kind of table manners that is regarded as essential in that "decent society" of which the President spoke.

The long investigation by this Committee did indeed uncover some KKK dirt, but no attempt was made to peer into the socio-historical environment that produced these men, women and children. The nation was presented by this Committee with the spectacle of incomprehensible, robed monsters in the night, acting in a vacuum out of their own innate wickedness. In other countries, at other times, this has been called *scapegoating*—and it is a most dangerous symptom to appear now in this America.

By contrast, the McCone Commission that examined criminal violence in Watts made a reasonably respectable effort to probe for such elementary sociological data as per capita income, unemployment rate, average schooling, mass transit and recreational facilities, etc.

Because this Committee took its initial cue from a President's threat, and then went to its work with all the finesse of a bad-cop-on-the-beat, its legislative remedies inevitably partake of the same attitude.

Metaphorically, then, we may summarize a tragic chain of events:

The President planted a flawed seed, which grew into a withered tree, now bearing a diseased fruit.

My interest in this question is neither recent nor academic. Five of the seven United Klans of America leaders cited by this Committee and Congress for contempt are friends of mine. These friendships were painfully constructed on both sides in spite of almost impossible barriers of ideology and background. I do not (and will not) repudiate those friendships; and I am quite ready to maintain those friendships in a federal prison where, together, we may puzzle over the question, Whatever happened to America?

This is not idle talk. Two sections of the Weltner Bill could well be construed by a zealous U.S. Attorney as applying to me. These sections relate to "communicating or publicizing" the proscribed group's "policies, plans, or directives," or "advising, counselling, imparting suggestions" to leaders and members of the proscribed group. On both counts, I am technically guilty—and will remain so. As a newsman, I have done considerable "communicating" or "publicizing" of Klan policies; as a private citizen, I have offered more than my share of advice, counsel and suggestions, in which I emphasized obedience to *all* law—state, federal and local. (If either the Weltner or Willis Bills are enacted, I will no longer counsel or suggest or advise obedience to all laws; I will make *one* exception.) So . . . the spectre of Leavenworth hangs over this statement, lending a certain piquant flavor to the proceedings.

As for not coming in lately to the scene of this action, let me introduce into the record excerpts from three of my statements in the past year.

1. Speech to 100 North Carolina Klan leaders, September 1965. "Guilt is personal and individual, never organizational. Organizations do not commit crimes; individuals do. Where *individual* Republicans, Methodists, Legionnaires, union members, CORE workers or Klansmen commit crimes, I favor vigorous prosecution in the courts. I *always* reject the attempt to outlaw an organization. Because I know that such an attempt can only boomerang disasterously in the long run, while restricting the liberties of all citizens in the short run . . . As a newsman I am coldly objective, but as a private citizen I am committed all the way to the end of the line to the defense of the Constitutional rights of *all* Americans. And on that limited, but clearly defined ground, I am happy and proud to do what I can to assist 'The Klan' against those who would use police state tactics to destroy it."

2. Letter to Rep. Charles Weltner, March 4, 1966. "The *exclusively* police approach is clearly not adequate for that task of reconciliation and reconstruction which is necessary for The Sane Society. Even now, we deal with alcoholics and drug addicts primarily as criminals. The sad result is that

we have increasing numbers of these unfortunates in our midst. Of course there is an important role for good police work in society's dealings with alcoholics and drug addicts; but we made the very American mistake of vastly overemphasizing the criminal aspects of alcoholic-addict behavior . . . it is my opinion that the proposed bill, as it would apply to 'The Klan,' is both unworkable and unconstitutional; it is the former in large measure because it is the latter."

3. Foundation proposal of the Committee of Southern Churchmen, May 1965. "Are the jails of this country big enough to hold all the Kluxers? We doubt it, and we doubt also the wisdom and righteousness of a governmental policy which seeks to meet the challenge of Klan resurgence by measures which are *exclusively* police in character. No one, for example, suggests that the challenge of Negro teen-agers in Watts can be answered solely in police terms. Yet we have come to this in our dealings with the new lepers, the new outcasts, the new untouchables who rage in blind frustration behind the very real walls of their 'white ghetto.' This classic example of the scapegoat mechanism reveals more about the larger society than it does about the 'white ghetto.'"

I am not a lawyer, and I do not pretend to have any authoritative knowledge about whether the legislative proposals here being considered are Constitutional. I note only that a distinguished professor of law at Harvard University, Dr. Vern Countryman, supports my layman's view that we stand here on dangerous ground. In an article in *The Nation* (July 4, '66), he analyzes the key injunction section of the Weltner Bill thusly: "The obvious purpose here is to circumvent the Constitutional guarantees for criminal trials completely. All subject to injunction are also subject to summary procedures for contempt of court in disregarding the injunction—without the benefit of indictment by grand jury, trial by jury, presumption of innocence, and the requirement that proof of guilt be beyond reasonable doubt."

Dr. Countryman, who (like me) is neither a conservative nor a segregationist, adds:

"Like the McCarran Act, it [the Weltner Bill] would drastically abridge those freedoms of speech, belief and association which the First Amendment forbids Congress to abridge. Men and organizations are to be proscribed because they are found to 'advocate' or have as 'purposes' or 'objectives' certain activities to be carried out in the future. Departing from our Constitutional practice of punishing acts, we are to continue and expand the McCarran practice of attempting to search out potential actors by official inquiry into and strictures upon speech, belief and association, in complete disregard of the First Amendment."

Much of Dr. Countryman's analysis also applies to the Willis Bill which, in addition to taking over the injunction machinery of the Weltner Bill, solemnly enumerates a series of crimes most of which are already crimes. This raises what has always been a very critical question: Why are not the *existing* laws enforced? (I know and condemn that section of the Klan Oath which binds members to cast an aquittal vote, for most crimes, on the juries of the "alien world" when fellow Klansmen are defendants. But that sort of monkey business does not begin to cover the dereliction of plain duty indulged in by so-called "respectable" men.) A prize example of non-enforcement of *existing* laws is provided in the much-publicized case of "Mr. X." Mr. X is from Georgia; he has always been the leading suspect in the Birmingham church explosion of 1963 that killed four Negro children. Yet Mr. X has not had what he plainly deserves—his day in court. Will the passage of new legislation change this? I doubt it. It has always been against the law to kill little children, black or white, in or out of church.

When we raise this kind of awkward question, we are on our way *out* of the cow pasture to the big homes on the hill, where the South's traditional rulers have always manipulated, skillfully and cynically, the racial antagonisms between low-income whites and blacks.

I am against abandoning the Constitution in order to defend it. If we have learned anything in the 20th century—along the grisly road from Auschwitz to Hiroshima—it is that ends are related to means. Those of a totalitarian bent are wrong; the good end *never* justifies the means that are used to achieve it.

I am against a desperate reliance on the scapegoat mechanism as an answer to the American racial crisis. If every Kluxer in America went off to prison

tomorrow, that crisis would continue: there would be no alleviation in Central Harlem or Watts or Paradise Valley.

I oppose driving "The Klan" further underground; the real problem is to draw them *out* into a more healthy participation in that society which is also theirs, and which has for so many years excluded *them*.

As a constructive answer to the challenge of Klan resurgence in the white ghetto, I am FOR the kind of massive, coordinated effort by private and governmental agencies which has already poured trained personnel and "cool it" money into the black ghetto.

My somewhat complicated feelings about the men, women and children caught up in Klan resurgence are best summed up by this fragment of a Bobby Dylan lyric:

Yonder stands your orphan with his gun,
Crying like a baby in the sun.
Look out! The Saints are coming through.
And it's all over now, Baby Blue.

Within the context of this discussion, what is "all over" is the conventional liberal solution to the American racial crisis. As we grope for a new solution—that is decent and humane and that does not do violence to the feelings of the citizenry—it would help if this enormously powerful government would cease and desist from the persecution of masses of relatively helpless people. If there is any crime more reprehensible than the murder of an unarmed white woman or the murder of an unarmed Negro educator, it is the persecution by a government of its own people. Such a government must ultimately raise the question of its own *right* to govern.

/s/ Pete Young,
PETE YOUNG,
Greenwood Avenue,
Lawrenceville, New Jersey.

July 18, 1966.

INDEX

INDIVIDUALS

ORGANIZATIONS

PUBLICATIONS

○